
(1962) 11 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 489 of 1961

Durganath Sarma

APPELLANT

Vs

Deputy Commission and/or Collector and Others

RESPONDENT

Date of Decision : 26-11-1962

Acts Referred:

Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955 —
Section 10(2), 11, 2, 3, 4
Constitution of India, 1950 — Article 13, 14, 19, 226, 31
Gaming Act, 1845 — Section 8
Land Acquisition Act, 1894 — Section 54

Citation : (1962) 11 GAU CK 0002

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : S.M. Lahiri and N.M. Lahiri, for the Appellant; B.C. Barua, General and R.K. Goswami, Sr. Govt, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—This petition raises the question of the constitutionality of the Assam Acquisition of land for Flood Control and Prevention of Erosion Act, 1955 (Assam Act VI of 1955). and the Assam Acquisition of Land for Flood Control and revention of Erosion (Validation) Act, 1959 (Assam Act XXI of 1960), For brevity's sake the first Act will be called hereinafter "Act VI of 1955, and the latter Act "Act XXI of 1960." The Petitioner further prays that the notice issued under the two Acts bS declared to be null and void and mandamus be issued directing the Respondents to forbear from giving effect to the provisions of the said Acts.

2. The facts are that the Petitioner Durganath Sarma is a resident of village Kamarkuchi of Mouza Upar Barbhog in the District of Kamrup owning 10 bigrias 1 katha and 5 lechas of land under different Pattas in different villages. For the construction of embankment on the river Pagladia Puthimari and Barlia the lands of the Petitioner and several other persons of the neighbouring, villages were

taken over by the State Government sometime in the year 1954. Ordinance No. II of 1955 was passed making provision for the acquisition of land for the construction of, the embankment and the Deputy Commissioner, Kamrup passed an order for the acquisition of the Petitioner's land and the land belonging to other co-villagers u/s 3 of the aforesaid ordinance. Later, as it transpired that the ordinance will not apply to the lands which have already been taken possession of in the year 1954, the acquisition proceedings under the ordinance were quashed and a direction was issued to acquire the lands under the provisions of the Land Acquisition Act. It should be pointed out that Act VI of 1955 replaces the ordinance. In some cases proceedings were initiated under the Land Acquisition Act 1894.

The Act VI of 1955 (The Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955) received the assent of the President on the 11th April, 1955. The Petitioner moved the authorities for payment of compensation in accordance with the provisions of the Land Acquisition Act 1894 as he had not been paid any compensation. As Act VI of 1955 did not apply to the lands taken possession of in 1954, the Deputy Commissioner, Kamrup suggested acquisition of the lands including the land of the Petitioner under the Land Acquisition Act and draft notification was sent for the approval to the Government. But before proceedings could be started, the Act XXI of 1960 was passed by the State of Assam. This Act was passed validating the acquisition of land of which possession had been taken before the coming in force of Act VI of 1955. On the 26th April 1956 the Petitioner was served with a notice by the Collector of Kamrup under the earlier ordinance of 1955 asking the stationer to hand over possession of the land and to submit a claim of compensation within ten days of the order. Possession was taken, it appears by the Government, but the compensation could not be assessed, as the Act VI of 1955 did not apply to the land of the Petitioner. Thereafter the Petitioner received notices dated 6th November 1960 and 10th November 1960 purported to be issued by the Collector, Kamrup u/s 3 of the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act intimating the Petitioner that the land had been acquired under the said Act and that the Petitioner should forward his claim for compensation. These notices have been challenged by means of the present petition under Article 226 of the Constitution.

3. The main contention raised by the Petitioner is that the provisions of Act XXI of 1960 under which the acquisition of the land made in the year 1954, has been validated, are ultra vires of the Constitution. It is urged that in the year 1954 the land was taken possession of without any authority of law and by illegal executive act. The Petitioner was thus deprived of his property in the year 1954 in violation of the provisions of Article 31(1) of the Constitution. It is not open to the State Legislature to validate an ultra vires Act and thus the Act XXI of 1960 is illegal in so far as it validates the possession taken of the land in the year 1954. It is further urged that the present Act validating the acquisition in the year 1954 being illegal, the Petitioner has been deprived of his property without

the authority of law and the action of the Respondents in issuing the notices is in violation of the provisions of Article 31(1) of the Constitution.

It is further contended that the Act XX of 1950 provides that the acquisition will be deemed to be under the provisions of Act VI of 1955 and thus the validity of the acquisition will have to be tested in accordance with the validity of the Act VI of 1955. In order to test the validity of Act VI of 1955, the constitutional provisions in existence at that date will have to be considered and if tested in that light, the Act VI of 1955 does not provide for any compensation as required under Article 31(2) of the Constitution. Act XXI of 1960 does not provide for compensation, nor does it lay down the principle for the determination of compensation as required under Article 31(2) of the Constitution. It was also urged that the law contemplated both under Article 31(1) and Article 31(2) of the Constitution is a valid law and thus the validity of the Provisions relating to compensation can be challenged under the provisions of Article 14 of the Constitution.

It is urged that the provisions of Act XXI of 1964 are discriminatory inasmuch as it is open to the executive to take action for similar land under the provisions of the Land Acquisition Act and thus providing for more compensation and in other cases to take action under the provisions of Act XXI of 1960 with the result that the persons who are dealt with under the latter Act will be getting less compensation. There is no reasonable basis for classification and Act XXI of 1960 is thus hit by the provisions of Article 14 of the Constitution.

4. Reference may be made to the provisions of the relevant Acts. Act VI of 1955 replaced an earlier ordinance and the provisions being similar it is not necessary to refer to the provisions of the ordinance, although action was taken against the Petitioner under the ordinance. Section 3 of Act VI of 1955 gives power to the State Government to acquire any land by order in writing stating the area and boundaries of the land, if in its opinion it is necessary or expedient to acquire speedily any land for works or other development measures in connection with flood control or prevention of erosion. After the service of the notice the property will vest in the State Government free from an encumbrances and the Collector is therefore, empowered to take possession over the land. Section 6 provides for compensation and is as follows:

6. The owner of the land which has vested in the Government u/s 5(1). shall get compensation at the following rate:

(1) for land excluding building or structure, if any, a sum not exceeding twenty times the annual land revenue:

Provided that In case of revenue free land and land paying revenue at concessional rate the compensation will be assessed on the basis of the revenue of similar revenue paying land of the neighborhood.

In determining this sum the Collector shall take the following into consideration:

(a) the value of the land as at the date of acquisition;

(b) the adverse effect on the value of the land due to possible floods on the land or danger of erosion of such land; .

(c) the benefit the owner is likely to derive in respect of his other lands in the area due to the control measures;

(d) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector taking possession thereof;

(2) for building or structure, if any, a sum equivalent to the sale proceeds of the materials of the same plus 15 per cent thereof:

Provided that if in lieu of this compensation the owner chooses to take away the materials the Collector shall allow him to do so within such time as specified by him and the cost of the shifting of the materials as may be approved by the Collector in the manner prescribed shall be borne by the Government, which cost however shall not exceed 20 per cent of the value of the materials as determined by the Collector.

Section 16 of the Act repeals the earlier ordinance but saves any action done or taken in the exercise of the power conferred under the said ordinance.

5. As the State Government had taken possession over the Petitioner's land in the year 1954 before the ordinance had come in force, it was realised that the possession could not be one under the ordinance and the Act of 1955. Later the State Legislature passed Act XXI of 1960. Section 2 of the said Act relevant for the present inquiry is as follows:

2(1) Notwithstanding anything contained in the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955 (hereinafter referred to as the "said Act"), any land taken over for the purposes of constructions of embankments or carrying out works or other development measures in connection with flood control or prevention of erosion before this Act came into force, except where acquisition was made validly under any other law for the time being in force, shall be deemed to have been validly acquired under the provisions of the "said Act" and the land shall absolutely vest and shall always be deemed to have been vested in the State Government from the date the land was actually taken possession of.

I have quoted above only the relevant portion of the section. Section 3 provides as follows:

The Collector shall, within a period of six months from the date of commencement of this Act, assess the value of land deemed to have been acquired u/s 2 in accordance with the principles contained in Section 6 and make an award u/s 8 of the said Act respectively; The owner of the land shall further be entitled to an interest at the rate of 6 per cent per annum on the value of the award for the period from the date the land was actually taken possession of to

the date of award.

Section 5 provides that except as otherwise provided in this Act, the provisions" of the said Act shall apply, mutatis mutandis in respect of the acquisition of the land deemed to have been acquired u/s 2 of this Act.

6. The contention of the Petitioner is that the object of the Act XXI of 1960 is only to declare that although the land has been taken possession of before the coming in force of Act VI of 1955, it will be deemed to have been validly acquired under the provisions of the said Act.

It is therefore necessary to examine the validity of the Act of 1955 with reference to the constitutional provisions in force at that time. If the Act of 1955 was void under Article 13 of the Constitution, the Act of 1960 could not declare that the possession taken by the Government of lands before the Act of 1955 came in force will be deemed to be validly taken possession of under the aforesaid Act.

Before the Act of 1960 was passed, by Act XVII of 1959 Act VI of 1955 was amended and Section 6 of the Act of 1955 will read as follows after the amendment:

6. The owner of the land which has vested in the Government u/s 5(1) shall get compensation at the following rate:

(1) for land including standing crops and trees, if any, "but excluding building or structure, a sum not exceeding forty times the annual land revenue in case of Periodic Patta Land and fifteen times the annual land revenue in case of Annual Patta Land:

Provided that in case of revenue free land and land paying revenue at concessional rate the compensation will be assessed on the basis of the revenue of similar revenue paying land of the neighbourhood.

In determining this sum the Collector shall take the following into consideration:
" the value of the land as at the date of acquisition;

(a) (sic)

(b) the adverse effect on the value of the land due to possible floods on the land or danger of erosion of such and;

(c) the benefit the owner is likely to derive in respect of his other lands in the area due to the control measures;

(d) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector taking possession thereof;

(2) for building or structure, if any, a sum equivalent to the sale proceeds of the materials of the same plus 15 per cent, thereof:

Provided that if in lieu of this compensation the owner chooses to take away the materials the Collector shall allow him to do so within such time as specified by him and the cost of the shifting of the buildings or structures as the case may be as may be approved by the Collector in the manner prescribed shall be borne by the Government, which cost however, shall not exceed 20 per cent of the value of the buildings or structures as the case may be as determined by the Collector.

7. The contention of the State counsel is that Act XXI of 1960 is an independent Act providing for acquisition of the land and for the purposes of fixing the compensation, the Act of 1960 has made reference to the Act of 1955. The provisions of the Act of 1955 which were amended in the year 1959 will be deemed to have "been incorporated in the Act of 1960 and the compensation will be payable to the Petitioner in accordance with the said provisions. The Act of 1960 is a valid Act. It provides for acquisition on payment of compensation. This Act is not hit by Article 31 or any other Article in Part III of the Constitution. In order to determine the constitutionality of the Act of 1960 the provisions of the Constitution in existence at the time when this Act was passed will have to be considered, it is contended that the words "shall be deemed to have been validly acquired under the provisions of the "said Act"" in Section 2 are redundant. The purpose of Section 2 is not to declare that the taking of possession prior to the Act of 1955 will be deemed to have been- taken under the Act of 1955, but to provide independently for the acquisition of any, land under the Act of 1960 and thus the words referred to above in Section 2 are redundant. It is also contended that the words "said Act" occurring in Section 2 refer to the Act of 1960 and not to the Act of 1955. On the plain reading of Section 2 we do not think that the words "said Act" refer to the Act of 1960. Section 2 clearly when referring to the Act of 1955 has said that hereinafter this Act will be referred to as the "said Act". It is therefore difficult to accept the argument of the Advocate General that the words "said Act" subsequently occurring in the same section refer to the Act of 1960 and not to the Act of 1955.

8. Every word in a statute has to be given some meaning and the Courts are not ordinarily to hold that the legislature has used words which are surplusage. The Judicial Committee in "*Ditcher v. Denison*", (1857) 11 Moore 324 at p. 337, said,

It is a good general rule in jurisprudence that one who reads a legal document whether public or private, should not be prompt to ascribe - should not, without necessity or some sound reason, impute - to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use.

The House of Lords in the case of "*Hill v. William Hill (Park Lane), Ltd.*", (1949) AC 530 at p. 546 in construing Section 8 of the Gaming Act, 1845 observed, - "It is to be observed that though a Parliamentary enactment (like Parliamentary eloquence) is capable of saying the same thing twice over without adding anything to what has already been said once, this repetition in an Act of Parliament is not to be assumed. When the Legislature enacts a particular phrase

in a statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which has not been said immediately before."

If the object of the Act of 1960 was to give power of acquisition, Section 2 need not have referred to the Act of 1955 and the legislature could have said in clear terms that the land will be acquired under the Act of 1960 and the procedure for State acquisition would have been set out in this Act. It was not necessary to refer to the Act of 1955 when providing for an acquisition of the land in the Act of 1960 itself. It cannot be doubted that it is open to a legislature to refer to the provisions of another Act and if such a reference has been made, the provisions of an earlier Act will be deemed to have been incorporated in the subsequent Act. When by Section 3 the legislature provided for payment of compensation on the principles contained in Section 6 of the Act of 1955, it by implication incorporated the provisions relating to payment of compensation. If the intention of the legislature was to incorporate the provisions of the Act of 1955 relating to acquisition, it could have used similar words in Section 2 and could have clearly provided that. By Section 2 it has not incorporated the proviso. at Section 3 of the Act of 1955 but has declared that any land taken over before the Act. of 1955 will be deemed to have been validly acquired under the said Act. If the Act of 1955 was invalid as being inconsistent with the fundamental rights guaranteed, under the Constitution, the legislature had no powers to declare that any act done before the said Act will be regarded as validly done under the said Act. It will be in effect declaring an Act to be valid which was unconstitutional at the time when it was passed. It may be competent for the legislature to pass an Act providing for acquisition and pay m^o. of compensation. But the question which calls for determination in the present case is whether the legislature can pass a declaratory Act validating an act which was illegal at the time when it was done under an unconstitutional Act. Can such an Act be sustained even though there is legislative competence for such an Act. The contention of the Petitioner is that even if the legislature was competent in the year 1960 to pass an Act providing for acquisition of land and payment of compensation provided for in the Act of 1955, it could not validate the Act of 1955, much less an act done before the said Act. If it could not validate an act done under the Act of 1955, it cannot declare that any action taken prior to that Act will be deemed to have been taken under that Act. For the purposes of the Act of 1960 the Act of 1955 will be deemed to be non-existent.

9. The Advocate General has argued that the words "and the land shall absolutely vest and shall always be deemed to have been vested in the State Government from the date the land was actually taken, possession of" show that Section 2 itself provides for acquisition of the (and as contemplated under Article 31 of the Constitution and not only declares the taking of possession prior to 1956 Act as one deemed to have been taken under the said Act. The clause that the land shall absolutely vest in the State Government from the date when the

actual possession is taken, only lays down the consequence of the acquisition. Even Section 5 of the Act of 1955 provided that when an order of acquisition is served, the land shall vest absolutely in the State Government. The proper interpretation of Section 2 will thus be that the legislature has laid down that land taken possession of prior to 1955 will be deemed to have been validly acquired under the Act of 1955 and in the subsequent clause it has specified the consequence of such an acquisition. This sentence does not independently provide for acquisition u/s 2 of the Act. No provision has been made in the Act of 1960 for service of notice on the owner or occupier of the land affected by this order. In the Act of 1955 there was a clear provision u/s 4 for service on owner or occupier affected by the order of acquisition with a view to give him an opportunity to show the purpose of acquisition was a public purpose or not. Section 4 of the Act of 1955 contemplated two notices - (i) with a view to enable the occupier to object to the purpose of acquisition and (2) in order to enable him to make a claim for compensation. No such provision has been made in the Act of 1960. Sub-section (2) of Section 2 only lays down that the Collector has to publish the description of the land deemed to have been acquired under Sub-section (1)" of Section 2. It is further urged by the Advocate General that if an Act refers to certain provisions in an earlier Act, the provisions of the, said earlier Act will be deemed to have been incorporated in the later Act. He has further contended that if the provisions of an earlier Act have been incorporated in the latter Act even the repeal of the earlier Act will not render the said provisions in the later Act ultra vires. Nor an action taken under the latter Act will be invalid as the earlier Act has been repealed.

10. In support of his proposition the Advocate General has referred to the case of "In re Wood's Estate. - Ex parte Her Majesty's Commissioners of Works and Buildings" reported in (1886) 31 Ch D 607. This case involved the interpretation of Section 11 of the Act 18 and 19 Vict. C.95 and it was held in this case that the effect of these enactments was to introduce the incorporated sections of the earlier Act into the later Act, just as if they had been enacted in it for the first time, and that, consequently, the later Act, with those sections in it, must be treated as having been passed after the Lands Clauses Consolidation Act, 1845. His contention is that as the provisions of the Act of 1955 will be deemed to have been incorporated in the Act of 1960, in this case it should be held that these provisions were enacted afresh in 1960 and the validity of the said provisions will have to be determined in accordance with the constitutional provisions in existence at that time.

11. The Advocate General has further referred to the case of "Secretary of State v. Hindusthan Co-operative Insurance Society Ltd., 58 I A. 259: (AIR 1931 P&H 149). The matter arose out of the land acquisition proceedings taken for the purposes of the Calcutta Improvement Act. The local Act under which land acquisition proceedings were taken did not provide for an appeal to His Majesty in Council against the decision of the High Court.

It was however argued that the Land Acquisition Act was amended and the award made by the Land Acquisition Officer under the Land Acquisition Act was made the decree of the Court. By virtue of amendment of Section 54 of the Land Acquisition Act thus an appeal could be tiled to His Majesty in Council against a decision of the High Court, in proceedings under the Land Acquisition Act. The contention was that as the local Act in 1911 had borrowed from the Land Acquisition Act Section 54, the amendment of Section 54 subsequent to the year 1911 will be deemed to have been incorporated in the local Act of 1911, and thus there was a right of appeal to His Majesty in Council. This contention was repelled by their Lordships of the Privy Council. It was observed that where provisions of an Act have been incorporated by reference into a later Act, the repeal of the earlier Act does not affect the later Act; so, too, an addition to the provisions incorporated, unless it is expressly made applicable to the later Act, is not to be deemed to be incorporated into it, at all events if it is possible for the later Act to function effectually without the addition. It was held that the Calcutta Improvement Act, 1911, which incorporated by reference the Land Acquisition Act 1894, subject to certain modifications, was not affected by an addition made to Section 26 of the Land Acquisition Act by a subsequent Act.

12. There can be no doubt that the provisions of an earlier Act can be incorporated in a later Act by a reference and the provisions will be deemed to have been enacted afresh when the later Act is passed. But on the proper interpretation of Section 2 it cannot be said that the provisions for acquisition in the Act of 1955 were incorporated in the Act of 1960. So far as the provisions relating to compensation are concerned, they were no doubt incorporated in the Act of 1960. But the same cannot be argued with regard to the provisions relating to acquisition. Secondly in the present case the contention of the Petitioner is not that the Act of 1955 has been repealed. The constitutionality of the Act of 1955 has been challenged and the argument is that as it violates fundamental right, it will be deemed to be non-existent and the provisions of such an Act could not be incorporated in a subsequent Act. In any view it is contended that the Act of 1960 could not declare that an act done before the Act of 1955 will be deemed to have been validly done under the Act of 1955 when the said Act itself is ultra vires. These cases therefore, do not apply to the facts of the present case.

13. It is contended by the Advocate General that as the Assam Legislature was competent to pass an Act providing for acquisition of land, it was also competent to pass an Act validating the executive action for acquiring certain land. The power to legislate carries with it the power to pass an Act validating a statute. Reliance is placed on the case of AIR 1941 16 (Federal Court). The following passage at page 26 has been relied upon:

The validation of doubtful executive acts is not so unusual or extraordinary a thing that little surprise would be felt if Parliament had overlooked it, and it would take a great deal to persuade me that legislative power for the purpose

has been denied to every Legislature, including the Central or Federal Legislature, in India. It is true that "validation of executive orders" or any entry even remotely analogous to it is not to be found in any of the three Lists; but I am clear that legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued.

This case to my mind, has no application to the present case. If the legislature has got power to legislate on a particular subject, any executive order issued in respect of that subject matter may be validated by the legislature. But the same principle will not apply to the case where the executive order infringes the fundamental right guaranteed under the Constitution. Nor can an Act be held to be valid simply because it validates certain executive order in regard to the matter on which the legislature was competent to enact, even though the order violates the fundamental right guaranteed under the Constitution. To the same effect is the case of AIR 1944 1 (Federal Court) .

14. The argument in effect is that to determine whether an executive act is valid or not and whether It violates a constitutional provision is the function of the Courts. It is a judicial function and the legislature by declaring that the executive action has been validly done encroached upon the judicial function, and has not done any legislative act. As pointed/out by Spens C. j. in the case of AIR 1944 86 (Federal Court) :

The distinction between a "legislative" act and a "judicial" act is well-known, though in particular instances It might not be easy to say whether an act should be held to fall in one category or in the other. The Legislature is only authorised to enact laws. Some of the pending proceedings hit by Section 10(2) may raise questions of fact and their determination may wholly depend upon questions of fact and not upon any rule of law, as for instance, when it is alleged that an order of detention was not really the act of the authority by whom it purports to have been made or that it was a mala fide order or one made by a person who had not been authorized to make It A direction that such a proceeding is discharged is clearly a judicial act and not the enactment of law. It is a direct disposal of cases by the Legislature itself.

An order passed by an executive under an Act which is declared by Courts to be invalid may be validated by legislature. The legislature may pass a law dealing with that subject matter and further declare that an order passed under an earlier Act will be deemed to have been passed under the later Act and thus validate the order. But it the legislature in its own force declares an invalid Act to be valid, it discharges a judicial function and not an executive function.

As was pointed out in the case of "Rola Co. (Australia) Proprietary Ltd. v. Commonwealth", 69 Com W LR 183 at p. 211-

The true function of judicial power is, as already In dictated, to investigate, declare and enforce rights and obligations" on present or past facts, by whatever

authority such facts are ascertained or determined, and under laws supposed already to exist.

In the case of *Tungabhadra Industries Ltd., Kurnool Vs. Commercial Tax Officer, Kurnool*, the following observations have been made by Misra C. J. with which we are in complete agreement:

if any enactment disposes of a case by the vigour of the enactment itself without leaving to the judiciary the power to pass the appropriate orders with reference to the law in force at the date of the order, it may be open to the objection of judicial functions being usurped by the Legislature. Where, however, the Legislature enacts, a rule of law applicable to certain facts which are to be ascertained by Courts, it would be essentially an exercise of enacting power though the new law may vary or reiterate the earlier law. The exercise of such a power would obviously be different from the exercise of judicial power inasmuch as the essential characteristics of a judicial function, namely, adjudication on facts and interpretation of law would be wanting in such a case;

15. In the case of *Ahmad Khan v. Emperor*, AIR 1948 Lah 120 the principle on which the validating Acts can be upheld has been laid down in the following terms:

The object of a validating Act is to enable parties to carry into effect that which they have designed and attempted but which has failed of its expected legal consequence only by reason of some statutory disability or irregularity in their action. By their very nature such Acts operate on conditions already existing.

Applying these principles to the facts of this case as the executive action by which possession was taken prior to the Act of 1955 was violative of the constitutional provision at the time when it was done, the Act of 1960 cannot validate such an Act, even though the legislature may have power in 1960 to enact a law for acquisition of property and such a law if enacted in the year 1960 may not be struck down on the ground of violation of the provisions of Article 31(2) of the Constitution as in force in the year 1960.

16. Coming to the validity of the Act of 1955 it will be necessary to refer to some of the provisions of the Constitution. Article 31(1) of the Constitution runs as follows:

No person shall be deprived of his property save by authority of law.

Article 31(2) of the Constitution as it stood prior to the Constitution (Fourth Amendment) Act, 1955 was as follows:

No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of

compensation, or specifies the principles on which, and the manner in which the compensation is to be determined and given.

By Section 2 of the Constitution (Fourth Amendment) Act, 1955 for Clause (2) of Article 31 the following clauses were substituted, namely:

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

(2A) Where a law does not provide for the transfer or the ownership or right to possession of any property to " the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

The amended Clause (2) of Article 31 has expressly provided for acquisition and requisition. It has further laid down that no law would be called in question in any Court on the ground that the compensation provided by that law is not adequate. The question of adequacy of consideration has thus ceased to be justifiable. Article 31(2A) has also set at rest the controversy whether deprivation of property by means other than acquisition or requisition by the State will be covered by Clause (2). The two clauses of Article 31 are independent (17) It is argued by the Advocate General that even if it is held that the Act of 1960 by itself does not provide for requisition, and it only declares that the land taken possession of before the Act of 1955 will be deemed to have been acquired under the Act of 1955. The validity of the Act of 1955 will have to be tested in the light of the constitutional provisions existing at the time when the validity is to be examined by the Court and not when the Act was enacted in the year 1955. He has further contended that the Act of 1955 was not violative of Article 31(2) of the Constitution even as it was at the time when the Act was passed.

Act VI of 1955 received the assent of the President on the 11th April 1955 and the Constitution (Fourth Amendment) Act, 1955 came in force on the 27th April 1955. This amendment was not given retrospective effect.

18. In the case of *Deep Chand Vs. The State of Uttar Pradesh and Others*, , it has been held that the doctrine of eclipse has no application to post-Constitution laws infringing the fundamental rights as they would be ab initio void or to the extent of their contravention of the fundamental rights. It has been held that the laws made after the coming in of the Constitution in violation of fundamental rights guaranteed under the Constitution are still born and are null and void from its very inception. Such a dead law cannot be revived by subsequent amendment

of the Constitution. That being the position, the validity of the Act of 1955 will have to be examined in the light of the constitutional provisions prior to the Fourth Amendment.

19. The contention of the Petitioner is that the Act of 1955 does not provide for compensation at all. The principles laid down for determination of the compensation u/s 6 of the Act of 1955 will result in no compensation. The word "compensation" carries with it the concept of quit pro quo and unless the principles are such which may result in giving the market value of the land, it cannot be said that the law provides for payment of compensation. It is contended that the basis on which the compensation is to be paid under the Act is examinable by the Court in order to find out whether the Act provides for payment of compensation or not. Reference is made in this connection to the case of *The State of West Bengal Vs. Bela Banerjee and Others*, .The following passages at pages 172-73 have been strongly relied upon.

We are unable to agree with the view. While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. 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. This, indeed, was not disputed.

Turning now to the provisions relating to compensation under the impugned Act, it will be seen that the latter part of the proviso to Section 3 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, 1946 as the ceiling on compensation, without reference to the value of 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). The fixing of an anterior date for the ascertainment of value may not, in certain circumstances, be a violation of the constitutional requirement as, for instance, when the proposed scheme or acquisition becomes known before it is launched and prices rise sharply in anticipation of the benefits to be derived under it, but the fixing of an anterior date, which might have no relation to the value of the land when it is acquired, may be, many years later cannot but be regarded as arbitrary. Any principle for determining compensation which denies to the owner this increment in value cannot result in the ascertainment of the true equivalent of the land appropriated.

Section 6 of the Act of 1955 is to be examined in the light of the observations referred to above. Sub-section (1) of Section 6 fixes the maximum limit of compensation payable under the Act to be twenty times the annual land revenue, which has subsequently been amended to forty times for land excluding buildings or structures. Although the Sub-section mentions the matters which are to be taken into consideration in computing the sum payable as compensation, still by Sub-section (1) the maximum limit has been fixed to be twenty times. The citizen whose property has been acquired under this Act, can, under no circumstances, get more than twenty times the land revenue irrespective of the fact whether the market value of the property is much more or less. No evidence has been led, nor any indication is to be found in the Act itself which will suggest that the value which a land will fetch in that period in the open market could not exceed twenty times the land revenue. In determining the sum payable as compensation within the prescribed maximum limit of twenty times of the land revenue, the value of the land as by the date of the acquisition is no doubt to be taken into consideration. But when the maximum has been fixed, the provision that the value will have to be calculated at the date of acquisition has no meaning. Clause (b) of Sub-section (1) of Section 6 provides that the adverse effect on the value of the land due to possible floods on the land or danger of erosion of such land is also to be taken into consideration in determining the amount of compensation. This clause will have the effect of reducing the amount of compensation, irrespective of the fact as to what will be the market value of the land. Clause (c) provides that the likely benefit to the owner in respect of his other lands in the area due to the control measures is also to be taken into consideration in computing the amount of the compensation. It is difficult to appreciate what connection this has to the determination of the compensation. The future benefit, if any, the owner, of his other land may get due to the control measures, can be no guide to ascertain the market value of the land which is being acquired. The said principle can be no guide to the determination of compensation. On the plain reading of Clause (d) of Sub-section (1) it may be argued that a person interested in the land will get some compensation if any damage is sustained by him by reason of the taking of any standing crops or trees on the land. This clause may have the effect of adding to the amount of the compensation, but it will help only those persons whose land is valued less than twenty times the land revenue, as that is the maximum limit fixed.

On a close reading of Section 6 in our opinion it is manifest that the Act of 1955 does not provide for a principle which ensures that what is determined as payable will be compensation, that is just equivalent to what the owner has been deprived of. As pointed out by the Supreme Court, it is for the legislature to lay down any principle for determination of the compensation. But the principles must be such as may result in payment of compensation, which is a just equivalent of what the owner has been deprived of. The Act of 1955 thus when tested in the light of the constitutional provisions in existence at that time was violative of Article 31(2) of the Constitution and is thus void under Article 13 of

the Constitution. The Act of 1960 thus, could not in our opinion declare that the land taken possession of prior to the Act of 1955 will be deemed to have been acquired under the Act of 1955.

21. It was further contended that the Acts of 1955 and 1960 are both violative of Article 19 of the Constitution. It is urged that the word "law" both under Clauses (1) and (2) of Article 31 should mean a law which is otherwise valid. A law which contravenes either Article 19 or Article 14 of the Constitution will be no law and as the Acts of 1955 and 1960 both affect the fundamental right to hold and possess any property, they are not saved unless Clause (5) of Article 19 is attracted. Prior to the coming into force of the Constitution (Fourth Amendment) Act it was held by the Supreme Court in the case of *The State of Bombay Vs. Bhanji Munji and Another*, that the validity of the law made under Article 31(2) of the Constitution could not be tested with reference to Article 19 of the Constitution and thus the validity of the Act of 1955 cannot be tested with reference to the provisions of Article 19 of the Constitution. It is however, contended that after the Constitution (Fourth Amendment) Act the earlier decision of the Supreme Court is no longer a good law as held by the Supreme Court in the case of *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, .

In our opinion the validity of the Act of 1955 is to be considered in the light of the constitutional provisions then in existence and the decision in *AIR, 1960 SC 1040* (ibid) does not lay down that even if the validity of any Act is to be tested with reference to the constitutional provisions prior to the Constitution (Fourth Amendment) Act, even then the decision in the case of *The State of Bombay Vs. Bhanji Munji and Another*, will not apply. What this case has laid down is that in view, of the Constitution (Fourth Amendment) Act, the earlier view held by the Supreme Court that the two clauses of Article 31 of the Constitution have to be read together has not been accepted by the legislature. The 1960 case dealt with the question of the meaning of the word "law" under Clause (1) of Article 31 of the Constitution and it only held that as after the Constitution (Fourth Amendment) Act the two clauses of Article 31 dealt with two different matters, Article 31(2) and (2A) dealing with acquisition and requisition and Article 31(1) dealing with deprivation of a property by authority of law, there was no justification in holding that Article 31 was a self-contained article providing for a subject different from that dealt with in Article 19. The case has not decided the point that even if a law is otherwise valid under Article 31(2) of the Constitution its validity can be tested with reference to Article 19 and that the earlier decision in the case of *The State of Bombay Vs. Bhanji Munji and Another*, would not apply to such cases also. In our opinion there is no substance in the contention of the Petitioner that the validity of the Act of 1955 would be tested in the light of the constitutional guarantee embodied in Article 19 of the Constitution.

The next objection taken by the Advocate General is that in view of the provisions of Article 31A of the Constitution the validity of the Act of 1955 cannot

be challenged on the ground of the violation of the provisions or Articles 31, 14 and 19 of the Constitution. Article 31A was introduced by the Constitution (First Amendment) Act, 1951 and the amendment was given retrospective effect. The article provides as follows:

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

the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or 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 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 licence 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 consorted 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.

(2) in this article,

the expression estate shall, in relation to any local area, have the same meaning as that expression or his local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inarn or muafi or other similar grant and in the States of Madras and Kerala, any jamnam right;

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.

It is contended that the law relating to land tenure in force in this area is the Assam Land Revenue Regulation and the word "Estate" has been defined in the Assam land Revenue Regulation as follows:

estate" includes- any land subject, either immediately or prospectively, to the payment of land revenue, for the discharge of which a separate engagement has been entered into.

The land thus, which has vested in the State is an estate within the meaning of the Assam Land Revenue Regulation and as such the validity of the Act of 1955 cannot be challenged on the ground of inconsistency with the provisions of Articles 31, 14 and 19 of the Constitution.

24. Reference is made to the case of Atma Ram Vs. The State of Punjab and Others, for the proposition that the word "estate" in Article 31A includes a part of an estate also. The argument no doubt in that case was advanced that in the purview of Article 31A only the entire estates were included but not portions thereof but that contention was negative. Sinha, J. (as he then was) observed at page 528 thus:

Keeping in view the fact that Article 31 A was enacted by two successive amendments -- one in 1951 (First Amendment), and the second in 1955 (Second Amendment) with retrospective effect, in order to effecting agrarian reforms, we have every reason to say that those expressions have been used in their widest amplitude, consistent with the purpose behind these amendments.

There are two answers to the contention raised by the Advocate General. First the point was not specifically taken in the counter-affidavit filed by the State. If the point had been taken, the materials would have been placed before us to show that the land in question does not come within the definition of the word "estate" under the Assam Land Revenue Regulation.

Secondly as the Act of 1955 deals with the acquisition of property and not with the law relating to agrarian reforms, Article 31A is not attracted.

As to the first objection the contention of the Advocate general is that as the point is one of law this Court can examine it. As the point involves consideration of facts also, the Petitioner can legitimately contend that the contention should not be examined by this Court as the point was not taken at an earlier stage. As to the second contention the counsel for the Petitioner relies upon the decision reported in AIR 1960 SO 1080 (b) After examining the object, scope and the purpose of the constitutional amendment by which Article 31A was introduced, it was observed by the Supreme Court as follows:

It is, therefore, manifest that the said Article deals with a tenure called "estate" and provides for its acquisition or the extinguishment or modification of the rights of the land-holder or the various subordinate tenure-holders in respect of their rights in relation to the estate. The contrary view would enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. It would also enable the State to compel a proprietor to divide his properties, though self-acquired, between himself and other members of his family or create interest therein in favour of persons other than tenants who had none before. Such acts have no relation to land-tenures and they are purely acts of expropriation of a citizen's property without any reference to agrarian reform. Article 31A deprives citizens of their fundamental rights and such an Article cannot be extended by interpretation to overreach the object implicit in the Article.

At another place it was observed that-

This Court has, therefore, recognized that the amendments inserting Article 31A

in the Constitution and subsequently amending if were to facilitate agrarian reforms and in that case it was held that the impugned Act affected the rights of the landlords and tenants.

This case is an authority for the proposition, that unless the impugned Act effectuates any agrarian reforms and in substance relates to land tenure, Article 31A will not be attracted.

25. In any case Article 31A only debars this Court from examining the validity of the Act of 1955 in the light of the provisions of Articles 14, 19 and 31 of Constitution. The contention that the Act of 1960 is invalid inasmuch as it declares the executive act of taking possession valid, is not challenging the constitutionality of the Act on the ground that it is inconsistent with Articles 14, 19 and 31 of the Constitution but on the competence of legislature.

26. In the result therefore, this petition is allowed in so far that a writ of mandamus is issued directing the opposite parties not to give effect to the notices issued under the Act of 1960.

S.K. Datta, J.

27. I agree.