

(1967) 10 AHC CK 0012

In the Allahabad High Court

Case No : Civil Misc. Writ No. 3043 of 1966, connected with Civil Misc. Writ No"s. 3638 and 3642 of 1966

G.S. Chooramani and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 25-10-1967

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 31, 31(2)
Government Grants (Uttar Pradesh Amendment) Act, 1960 — Section 2, 3, 6
Uttar Pradesh Government Estates Thekedari Abolition Act, 1958 — Section 3
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 4

Citation : AIR 1969 All 43

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Ambika Pd. and Mohanji Verma, for the Appellant; Standing Counsel and A.G., for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This and the two companion writ petitions challenge the constitutional validity of the U. P. Government Estates Thekedari Abolition Act, 1958, and seek to quash the notification dated June 30, 1966, issued by the State Government u/s 3 of that Act, determining the lease held by the petitioners.

2. The material and the relevant facts and the questions which arise for determination are common in all the three writ petitions. They can be disposed of by a common judgment. The earliest of them, namely, G. S. Chooramani v. State of Uttar Pradesh, (Civil Misc. Writ No. 3043 of 1966) is treated as the leading case.

3. The Government of Uttar Pradesh, owned many villages in the area known as Tarai and Bhabar in the district of Naini Tal. The Tarai and Bhabar area was undeveloped, covered with dense forest and infested with wild animals. The State Government was anxious to develop this area by settling tenants thereon

and introducing stable cultivation. It offered attractive terms and facilities to persons who were prepared to invest capital and effect improvement in it. The Government of Uttar Pradesh agreed to lease plots of land totalling 1188.82 acres situate in two villages Bangawam and Radhulia in favour of the petitioner's father Dr. Rameshwar Singh. The Deputy Commissioner, Naini Tal, on behalf of the Government, executed a deed of lease on 12th February, 1951 of the aforesaid plots of land in favour of Dr. Rameshwar Singh for a term of 30 years beginning with 1st July, 1950, with option of renewal for further terms of 30 years, provided that such renewed terms together with the original term of the lease shall not exceed 90 years in the aggregate. The deed laid down the principles upon which the rent payable was to be calculated per bigha, as also the various rights and liabilities inter se between the parties. The lease was governed by the Government Grants Act XV of 1895. The petitioners allege that actual possession was delivered over 1107 acres only. An area of 270 acres was utilised for planting groves of various kinds of trees. The rest of the land was put to cultivation. All this was done after clearing the land of the forest and developing it so as to make it cultivable. The petitioners installed several tubewells, inducted labourers to the farm, constructed pucca buildings and sheds for them and animals, bought tractors, tools and other instruments for mechanised farming. The petitioners allege that they spent over Rs. 5,00,000,00 in building up the farm on the leased land.

4. On 20th January, 1959 the U. P. Government Estates Thekedari Abolition Act, 1958, (U. P. Act No. 1 of 1959) (hereinafter called the Thekedari Abolition Act) came into force. By a notification dated 17th June, 1965 the State Government extended the Thekedari Abolition Act to the district of Naini Tal. On 30th June 1966 the State Government issued the impugned notification in exercise of the powers conferred by sec. 3 of the Thekedari Abolition Act determining all leases in respect of Government Estates in 35 villages including villages Bangawam and Radhulia, in the Tarai and Bhabar area. As a result the petitioners' lease stood determined prematurely, the Collector, Naini Tal issued a notice to the petitioners intimating them that the lease in their favour having come to an end, he will take possession of the land covered by the lease with effect from 1-7-1966. This action of the respondents led the petitioners to this Court under Article 226 of the Constitution. The constitutional validity of the Thekedari Abolition Act and the validity of the impugned notification was challenged in the petition on many grounds, but, at the hearing the learned counsel pressed the following points :--

(i) That the Act applies to thekedari leases alone and is not attracted to cultivatory leases; in any event, applying the Act without introducing land reforms was a mala fide exercise of power.

(ii) The Act in substance acquires the lessees' rights, title and interests within the ceiling limit, but does not provide for the payment of constitutionally prescribed compensation at the market rate; and as such, it violates Article 31-A of the Constitution.

(iii) The Act provides for payment of illusory compensation and infringes Article 31 of the Constitution.

4A. The preamble of the Thekedari Abolition Act states that it was an Act to provide for the Abolition of Thekedari system in Government Estates with a view to facilitate the introduction of land reforms therein. Under Sub-section (2) of Section 1, the Act extends to such districts of Uttar Pradesh as may be notified from time to time. Under Sub-section (3) of Section 1, the Act is to come in force on such date as the State Government may notify and different dates may be notified for different areas in the State. u/s 3 the State Government was authorised to determine any lease with effect from a date to be called the date of determination. By Clause (5) of Section 2 "lease" was defined to mean a theka or patta in respect of a Government Estate made by or on behalf of the State Government. Clause (6) of Section 2 defined a "lessee" to mean a thekedar or pattedar under a lease by whatever name called. Section 4 mentioned the consequences of the determination of leases. With the determination of the lease, all rights, title and interest of the lessee under the lease were to cease, as though the term of the lease had then expired. The lessee was to become the hereditary tenant of such land as he had brought under his personal cultivation upto a maximum area of 30 acres. Any area in excess of 30 acres in his personal cultivation was deemed to be vacant land and the lessee was liable to ejectment from such an area. Under Clause (g) of Section 4 every mortgage, sub-lease or other transfer of lessee rights also determined "as if the lands included in the lease had been acquired under an enactment providing for compulsory acquisition." u/s 6 the Collector was to take charge and possession of the land included in the lease. Section 7 provided for payment of compensation to the lessee for the determination of the lease, in accordance with the principles laid down in the Act. The amount payable as compensation was to be determined by multiplying the net income as determined u/s 10 by the number of years for which the lease had yet to run, subject to a maximum of five.

5. For the State it was urged that the Act applies to all leases made in respect of the Government estates. It was pointed out that the definitions of the words "lease" and "lessee" are general and wide, the amplitude of their language covers a purely cultivatory lease also; i. e. to say a lease which may not strictly speaking be of thekedari rights, assuming that the word "Thekedari" was used in the Act in the sense prevalent in the revenue law of the State. The petitioners joined issue on this point. They urged that the Act was not intended to uproot cultivators, but only to abolish the thekedari system. The definition clauses in Section 2 operate "unless there is anything repugnant in the subject or context." They must be read subject to the avowed object, the various provisions of the Act and the impact of other enactments relating to land reforms, for facilitating the introduction of which alone the impugned Thekedari Abolition Act was expressly enacted.

6. Learned counsel for the petitioner sought to rely upon the statement of

objects and reasons and the debates in the State Legislature to show what matters and problems were in the minds of the sponsors of the bill and the law makers while enacting this Act. For the respondents, however, this was objected to. It was urged that the statements of objects and reasons or the parliamentary debates were inadmissible in construing the provisions of a section. The Privy Council consistently refused to refer to the proceedings of the legislature as legitimate aids to the construction of a section of an Act, see *Administrator General of Bengal v. Premlal Mullick* ILR (1895) Cal 783 at p. 799 (PC), and AIR 1920 56 (Privy Council) . The Supreme Court has similarly rejected the aid of debates in construing a section, see *State of Trav. Co. v. Bombay Co. Ltd.* AIR 1952 SC 366, *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, . S K. Dass, J. in *The Central Bank of India Vs. Their Workmen*, proclaimed that the statement of objects and reasons was not admissible for construing the section, far less can it control the actual words used. The same view was expressed by Venkatarama Aiyar, J. in *Jia Lal Vs. The Delhi Administration*, and by Hidayatullah, J. in *Ranjit Singh and Others Vs. State of Punjab and Others*, . These formidable array of authorities are, in my opinion, a little besides the point. 7. The golden rule of construction established since the ages was reiterated by S. R. Dass, J. in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . This rule of construction was first propounded by Lord Coke in *Heydon's case* (1584) 3 Co Rep 7 (V). In 1898 Lindley M. R, in the case, *In re, Mayfair Property Co.* (1898) 2 Ch. 28 at p. 35 found the rule "as necessary now as it was when Lord Coke reported "*Heydon's case* (1584) 3 Co Rep 7 S. R. Dass, J. stated (paragraph 22);

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon's case* (1584) 3 Co. Rep 7 (V) was decided that:

". . . . for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered.

1st. what was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Common-wealth, and

4th. The true reason of the remedy and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and "pro private commodo" and to add force and life to the cure and remedy according to the true intent of the makers of the Act, "pro bono publico".

For finding the true intention it is admissible to see what was the State of the law before the Act was made, and, what was the mischief and defect to cure which the Act was passed. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI)* and

Others, Fazl Ali J., admitted that parliamentary history including the speech of the minister introducing the bill was admissible as evidence of "the circumstances which necessitated" the passing of the Act. This view was approved by the Supreme Court in subsequent cases. In *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, and *State of Gujarat v. Shyam Lal* AIR 1965 SC 1251 at p. 1255 statement of objects and reasons or the legislative debates were held permissible to ascertain the "historical setting" of an enactment. In *A.K. Gopalan Vs. The State of Madras*, , Kania, C. J. expressed the view that the debates can be referred to show that the use of a particular word was up for consideration at all before the legislature or not. Similarly, Sinha C. J. in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, observed that the statement of objects and reasons can be used for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. So also S. R. Dass J. in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, held that reference to Statement of Objects and Reasons was permissible for ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy.

8. For the petitioner reliance was placed upon the Statement of Objects and Reasons and the speech of Sri Charan Singh, the Finance Minister, who piloted the Bill in the legislature, to show the historical setting of the problems and the assurances on which the Act was sought to be introduced. For this purpose the statement and the speech would be relevant and admissible. The Statement of Objects and Reasons of the Bill (as published in U. P. Gazette Extra-ordinary dated October 21, 1957 p. 14) was:

"The existence of thekedars in Government Estates in nine districts of Uttar Pradesh makes it difficult to introduce the scheme of land reforms enunciated in the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, in those areas. With a view to bring the rights of people in those areas in line with the rest of the State and to enable them to reap the full benefits of their efforts and investment in the land under their cultivation, it is necessary to abolish the rights and interests of such thekedars first. This Bill therefore, provides for the abolition of thekedari system in Government Estates."

The Finance Minister while introducing the bill before the legislature stated that the Government had estates in 41 districts of the State out of which land reforms have been effected in 32 districts. In 9 districts of the State i. e. to say Ballia, Bijnor, Farrukhabad, Gonda, Jhansi, Varanasi, Kheri, Pilibit and Unnaon, Government Estates were in possession of Thekedars and for that reason land reforms could not be carried out in the Government Estates in those districts. Before the land reforms measures could be introduced, it was necessary to abolish the thekedari system. On the abolition of the thekedari system land reforms would be enforced in those districts. Thus there was no intention to uproot cultivators or tenure-holders. The thekedari system alone was to go

because it was an obstacle to the conferment on cultivators the benefits of the U. P. Zamindari Abolition and Land Reforms Act.

9. The Bill after receiving the assent of the President of India, became law on 20th January, 1959. On 30th June, 1959, the State Government issued notification No. 312/IC-277-C-1953 enforcing the Thekedari Abolition Act in the above-mentioned nine districts of the State. The same day another notification No. 312(4)/ IC-277-C-1953 was issued u/s 3 of the Thekedari Abolition Act ordering that with effect from July, 1959, all leases in respect of Government Estates in those nine districts shall be determined. The same day, the State Government issued a third notification under the powers conferred by Clause (b) of Sub-section (1) of Section 2 of the U. P. Zamindari Abolition and Land Reforms Act, 1950. This notification directed that the Zamindari Abolition and Land Reforms Act shall with effect from July 1, 1959, apply to Government estates situate in the districts in which the Thekedari Abolition Act has been enforced by virtue of the notification dated June, 30, 1959. This notification then stated:

"but in the case of estates or parts thereof in which no intermediary, as defined in Clause (12) of Section 3 of the said Act, has any right, title or interest, the Act shall apply subject to the modifications and amendments specified in the Schedule appended hereto."

The notification further stated that the Zamindari Abolition and Land Reforms Act shall come into force in the aforesaid estates with effect from 1st July, 1959. With a single swift and an efficient stroke, the Thekedari Abolition Act was extended and enforced in the nine districts. All leases were determined and the Zamindari Abolition and Land Reforms Act enforced, in respect of all the Government Estates, with effect from 1st July, 1959.

10. The speech of the Finance Minister did indicate that the Thekedari system had to be abolished before land reforms could be enforced in the Government Estates, but the Hon"ble Minister did not say that only thekedari leases were to be affected by the Act. The language of the definition clauses is wide and includes every lease and lessee by whatever name called. The intention that the Act was to govern all leases of the Government estates is further strengthened by the second notification mentioned above by which all the leases were determined. Further, the third notification enforcing the Zamindari Abolition and Land Reforms Act made it clear that in the case of estates in which no intermeditary, as defined in Clause (12) of Section 3 of the Zamindari Abolition and Land Reforms Act, has any right, title or interest, the Zamindari Abolition and Land Reforms Act shall apply subject to the modifications and amendments specified in the schedule. Clause (12) of Section 3 of the U. P. Zamindari Abolition and Land Reforms Act defined an "intermediary" to include a thekedar. The determination of the leases and the enforcement of the Zamindari Abolition and Land Reforms Act was not confined to those estates alone which were under a lease with a thekedar. A perusal of the Schedule shows that Sections 130 and 131 of the Zamindari Abolition and Land Reforms Act were to apply with the

modification that a lessee to whom the provisions of the Government Grants Act, 1895 apply will become a bhumidhar, if he possessed the right to transfer the holding by sale; otherwise he will become a sirdar. So, in respect of the estates in which no intermediary including the thekedar had any right, the leases made by the State Government were determined, but the lessees became bhumidhars or sirdars. In Government Estates on lease to thekedars, the Zamindari Abolition Act applied as it was. The title of the thekedar determined u/s 4 of that Act, but cultivators or tenants became bhumidhars or Sirdars. In every case, all Government leases were extinguished and fresh rights conferred, on the tillers of the soil.

11. If it were to be held that non-thekedari leases were not within the purview of the Act, the purpose mentioned in the preamble i.e. the introduction of land reforms in Government Estates would be frustrated rather than facilitated. For instance, the Zamindari Abolition Act will confer its benefits on subtenants on land covered by thekedari leases, but will not apply to sub-tenants of other kinds of Government leases. This will be odd and discriminatory, specially when in all Government Estates in 31 other districts where no thekedars existed, the Zamindari Abolition Act had already been enforced by notification No. 1780/IC-227-C 1953 dated March 31, 1955 (See p. 361 of Government Edition of U. P. Z. A. Act 1958 Ed.) For all these reasons, I am unable to accept the petitioner's submission that the Thekedari Abolition Act applied only to thekedari leases. But, I am prepared to hold that this historical survey plainly and unambiguously establishes that the legislature in enacting the Thekedari Abolition Act did not intend that the non-thekedari lessees of Government Estates would vanish or be uprooted from the soil. Cultivatory leases were intended to be respected. Cultivators were to have the benefit of the laws relating to land reforms and were to become bhumidhar or sirdar.

12. In 1965 the State Government appears to have departed from the initial proclaimed purpose that the Thekedari Abolition Act was to apply to the nine districts mentioned by the Hon'ble Revenue Minister. By a notification No. 1683/IC-340C-65, the State Government extended the provisions of the Act to the areas comprising the district of Naini Tal, with effect from June, 26, 1965. The same day by another notification No. 1688 (ii) IC-340C-65, the State Government ordered that u/s 3 of the Thekedari Abolition Act, all leases in respect of Government Estate in 53 Mustajiri villages of the Tarai and Bhabar Government Estate, district Naini Tal, shall with effect from 1-7-1965 be determined. Mustajiri means zamindari. In these villages the Government lessees had proprietary rights (vide District Gazetteer Vol. 34, p. 128). Then, all leases in the Government Estates of 35 other villages in the Tarai and Bhabar area were determined by the impugned notification dated 30th June, 1966. These are non-musajiri or kham villages, that is, directly managed; the rent being in cash, at Bighawar rate. For the petitioners it was contended that though the leases were terminated under the Thekedari Abolition Act, but the Zamindari Abolition Act has not been extended to the Government Estates in these 35 villages, I asked

the learned counsel appearing for the State to verify this and make a statement. The hearing was adjourned to enable him to obtain instructions. Learned counsel then confirmed the fact stated for the petitioners.

13. The result, therefore, is that the Thekedari Abolition Act is in force in the district of Naini Tal. All leases in respect of Government Estates in 35 villages were determined by the impugned notification of 30th June, 1966. There has been no enforcement of the U. P. Zamindari Abolition and Land Reforms Act to the Government Estates in these villages. The petitioners' rights, title and interest under the leases have vanished. They have not acquired any rights under the Zamindari Abolition and Land Reforms Act. For the petitioners it was urged that the impugned notification was a mala fide exercise of power.

14. To this the reply was that the Act conferred a discretionary power on the Executive to determine leases in any district. The impugned notification was squarely within the language of the section; which did not make the determination of the leases conditional upon the introduction of land reforms. The preamble could not control the charging sections. The non-enforcement of the Zamindari Abolition Act was not relevant to the validity of the notification. The question is: Are Courts tied down merely to the literal view of words? Mr. Justice Holmes said: "We must think things and not words." Per Hidayatullah J. in *I. G. Golak Nath v. State of Mysore*, Writ Petns. Nos. 153 and 205 of 1966 decided by the Supreme Court on 27-2-1967 reported in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, . Venkatarama Aiyar, J. in *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, held that the literal meaning had only a prima facie preference in a court; but to arrive at the real meaning it is always necessary to get an exact conception of the aim, and the scope and object of the whole Act. Viscount Simonds in *A. G. v. Prince Ernest Augustus* 1957 AC 436 at p. 460 said that words took their colour and contents from their context; context includes other enacting provisions, the preamble, the existing state of the law and the mischief which by legitimate means the Court can find that the Statute was designed to remove.

15. In *Industrial Law* bonus is understood to be a share of the workman in profits. The labour appellate tribunal awarded bonus even though the Mill had made a loss. The Supreme Court reversed the decision. In *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur*, Bhagwati, J. held that the concept of social justice does not emanate from the fanciful notions of any adjudicator but must have a more solid foundation.

16. In *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, the Supreme Court confined the applicability of Article 31-A of the Constitution to laws relating to agrarian reforms only, in view of its statement of objects and reasons.

17. So, a discretionary power can be validly exercised within the language of the law as circumscribed by its purpose and policy. If by taking advantage of the

flexibility of the language, the executive creates a tiny loophole and attempts to drive through it a coach and four, to gain an end contrary to the true intent and content of the law, it fraudulently diverts the use of power. Such an exercise is colourable and void.

18. The legislature knew that in 1955 the benefits of the Zamindari Abolition and Land Reforms Act had been extended to Government Estates in 31 districts. It was told that the Thekedari Abolition Act was intended to extend land reforms in the remaining districts. I dare say that the legislature, and the President of India while giving his assent, would have recoiled at the very thought of it, had they been informed, that this Act will be used to single out the District of Naini Tal for a harsh and oppressive treatment, by extinguishing the leases of pioneers who risked their lives and fortune to develop the area for the first time in its history, without extending the benefits of the land reforms provisions. We have seen that the legislature was in a way assured to the contrary. The impugned notification is an act of bad faith with the legislature. It is fraud on powers and is for that reason ineffective. The impugned notification deserves to be quashed.

19. If the submission for the State is accepted and the notification is held to be a valid exercise of the power conferred by the Act, the Act itself would cease to have the protection of Article 31-A. While dealing with the next submission that the Act violates the second proviso to Article 31-A, I have held that Article 31-A protects legislation relating to agrarian reforms. On the submission of the learned counsel, the Thekedari Abolition Act would, in relation to Nainital district, not have that objective. It will not be covered by Article 31-A and would be open to attack on the ground that it violates Articles 14, 19 or 31. It may well have to be held that it violates Article 14.

20. The next submission advanced on behalf of the petitioners was that the Thekedari Abolition Act violates the second proviso to Article 31-A of the Constitution and as such it became void with effect from 20th June, 1964, when the aforesaid second proviso was added to the Constitution by the Constitution 17th Amendment Act.

21. Before dealing with the merits of this problem, it will be feasible to consider the scope of the second proviso and the place the Constitution reserves for it in the scheme of the Articles relating to right to property. This matter cannot be adequately understood without a knowledge of the legal background of Articles 31, 31-A and 31-B. The relevant and the material provisions of these Articles may first be read:

"31. Compulsory acquisition of property:

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

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the

compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of 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.

(3) No such law as is referred to in Clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent".

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

(1) Notwithstanding anything contained in Article 12, 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)

(c)

(d)

(e)

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 the Legislature of a State, the provisions of this article shall not apply therein unless such law, having been reserved for the consideration of the President, has received his assent.

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

Sub-section (2) of Article 31-A explains the expression "estate" and "rights" in relation to an estate. An "estate" means what the local law relating to the land tenure says. "Rights" include rights vesting in a proprietor, tenure-holder or other intermediary etc.

22. Article 31-B runs as follows:

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

The 9th Schedule at present has 64 entries. The Explanation to the 9th Schedule is:

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

It may be noted that the Rajasthan Tenancy Act, 1955 is mentioned at Entry 55 of the 9th Schedule. 23. The Bihar Land Reforms Act, 1950, which sought to abolish zamindari was challenged in *Kameshwar Singh v. State of Bihar* AIR 1951 Pat 91 (SB). The plea that it violated Article 31(2) failed, but the attack under Article 14 succeeded. The Patna High Court delivered the judgment on March 12, 1951. At that time Land Reforms Acts of several States including Uttar Pradesh, Orissa and Madhya Pradesh were under challenge in courts on similar grounds. With a view to put an end to this litigation and make agrarian reforms effective, Parliament by the Constitution 1st Amendment Act, 1951, passed on 18th June, 1951, added Articles 31-A and 31-B with retrospective effect. Article 31-A protected laws providing for the acquisition of estates or rights therein. Article 31-B was put in as a further line of defence. The 9th , Schedule contained the Land Reforms Acts passed in the various States. Thus the first stage of agrarian reforms was achieved.

24. In *The State of West Bengal Vs. Bela Banerjee and Others*, the Supreme Court held that compensation in Article 31(2) meant "a just equivalent." Another controversy which was raised at that time related to the mutual applicability of Clauses (1) and (2) of Article 31. In *Dwarkanadas 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*, the majority held that Clauses (1) and (2) of Article 31 dealt with that same subject matter of Eminent Domain and a substantial deprivation of the right to or of possession of property though done under Clause (1) would have to satisfy the conditions of Clause (2). Das, J. in his minority judgment, however, held that Clause (2) alone dealt with the concept of Eminent Domain, that is, acquisition or requisition wherein title or possession passed to the State, whereas Clause (1) related to police powers. Parliament was exercised over these decisions. Pandit Jawahar Lal Nehru indicated that there

were two courses open, either to "reform" the Supreme Court, or to "disarm" it by amending the Constitution. The second course was adopted by enacting the Constitution 4th Amendment Act, 1955, to nullify those decisions. As observed by Subba Rao J. in *Rajkumari Kaushalya Devi Vs. Bawa Pritma Singh and Another*, Parliament accepted the minority view of Das, J. Clause (2) of Article 31 was changed. The word "requisition" was introduced in it in place of the phrase "shall be taken possession of". Clause 2A was also added. To make the inadequacy of compensation non-justiciable, the following was added to Clause (2)

"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."

25. It was felt that the fourth amendment was not intended to abolish the fundamental right conferred by Article 31(2). If the word "estate" in Article 31-A was widely construed, it would include practically the entire land of the country, and the same could be taken for a non-public purpose and for meagre compensation. That would have made Article 31(2) a dead letter, *qua* land. In *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, the Supreme Court considered the statement of objects and reasons of the fourth Amendment and contained the scope of Article 31-A to it. It was held that "Article 31-A deprives citizens of their fundamental rights and such an article cannot be extended by interpretation to overreach the object implicit in the article." It was held that Article 31-A would apply only to laws relating to agrarian reforms in respect of estates held on tenure. Article 31-A would not be attracted to a law providing for instance, partition or devaluation of the property, or laws which were purely ex-proprietary without any relation with agrarian reforms. The Court took limited view of the concept of agrarian reforms, be as to exclude ancillary matters like development of waste or vacant land. The various States had undertaken the second stage of agrarian reforms by enacting laws relating to Consolidation of Holdings and imposing ceiling on land holdings. They were being challenged to Courts.

26. In this state of affairs. Parliament again intervened by enacting the Constitution 17th Amendment Act, 1964 on 20th June, 1964. The definition of "estate" was amended and enlarged so as to include waste or vacant land. The 9th Schedule was amended by adding *inter alia*, laws relating to imposition of ceiling on land holdings. Having protected the ceiling Acts, Parliament protected lands within the ceiling limits of tenure-holders. For that, the second proviso was added. The explanation was appended to the 9th Schedule to make the second proviso really effective even against obnoxious existing laws.

27. In *Ranjit Singh and Others Vs. State of Punjab and Others*, the Supreme Court held that Article 31-A would apply to transfers or alterations of tenure where that was dealt with in a legislation, the general scheme of which was to promote agrarian reforms. The matter again came up before the Supreme Court in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, where

Subba Rao, J. spoke for the Court that the position was that agrarian reforms included ancillary matter like development of vacant and waste land, as indicated by the 17th Amendment, but that Article 31-A would apply to laws relating to agrarian reforms alone.

28. The position therefore, was that Article 31(2) referred generally to acquisition and requisition of property, for which the inadequacy of compensation was not justiciable. Sub-clause (a) of Clause (1) of Article 31-A dealt with laws relating inter alia, to acquisition and requisition of an "estate", that is to say, of land which was held on a tenure and is sought to be taken under a law relating to agrarian reforms. Article 31-A protected such laws against violations of Articles 14, 19 and 31. After the 17th. Amendment, its role in the scheme of things visibly changed. It gave by the 2nd proviso, protection to persons also against acquisition of their ceiling areas.

29. It was for the State argued that the second proviso was merely a proviso to Article 31-A. Its violation would make Article 31-A inapplicable, and the law would become vulnerable to an attack under Articles 14, 19 and 31. But then if a law relating to acquisition of an estate satisfied Clause (2) of Article 31, it would be valid. In my opinion this submission is not sound.

30. Article 31-A after the 17th Amendment, carves out a field of legislation from Article 31(2), and is a complete code in respect of that field. The field is acquisition of an "estate". On this field Article 31-A acts to the different ways. Negatively, it protects laws relating to that field from an attack under Articles 14, 19 and 31. Positively, by the second proviso it protects persons personally cultivating land within their ceiling limits, from acquisition without payment of compensation at the market rate. This is a protection against Article 31(2); because under Article 31(2), such land could be acquired without paying compensation at the market rate. If Article 31(2) were also to apply, the result would be that Parliament will be deemed to give with one hand and, at the same time, take it away with the other. That will be absurd.

31. The second proviso does not in so many words indicate the effect of its contravention. But, the Explanation simultaneously added to the 9th Schedule suggests that a law contravening the second proviso would be void. In my opinion, Parliament gave a substantive guarantee and conferred a fresh fundamental right by the second proviso. It is well known that the legislature can enact a positive independent provision in the form of a proviso, see *Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai*, and *The State of Orissa Vs. Dabaki Devi and Others*, . The submission for the State that the Thekedari Abolition Act, even though it may violate the second proviso, would nonetheless be valid, if it does not infringe Clause (2) of Article 31, is in my opinion, not sound. If the Thekedari Abolition Act violates the second proviso, it would be unconstitutional then and there.

32. The question then is whether the Thekedari Abolition Act infringes the second

proviso to Article 31-A. Clause (a) of Sub-section (1) of this Article deals with acquisition of the estate or of rights in an estate. It also mentions extinguishment or modification of rights in an estate. In *Ajit Singh Vs. State of Punjab and Another*, the Supreme Court held that if the result in the case of extinguishment of rights is the transference of all the rights in an estate to the State, it would properly fall within expression "acquisition by the State of an estate". It ruled that in the case of "modification or extinguishment" of rights the beneficiary is not the State, whereas in "acquisition" either of an estate or of rights therein the beneficiary is the State itself. The Supreme Court dealt with a case of determination of a lease and observed (paragraph 8).

"For example, suppose the State is the landlord of an estate and there is a lease of that property, and law provides for the extinguishment of leases held in estate. In one sense it would be an extinguishment of the right of a lessee, but it would properly fall under the category of acquisition by the State because the beneficiary of the extinguishment would be the State."

The Thekedari Abolition Act extinguishes the leases granted by the State Government in respect of Government estates. The beneficiary of the determination of the leases is the State. u/s 6 of the Act the Collector takes over possession and charge of the land, building etc. u/s 4, Clause (g) of the Act every mortgage, sub-lease or other transfer of lease rights are also to be determined as if the land included in the lease had been "acquired" under an enactment providing for compulsory acquisition. The Act contemplates payment of compensation for the determination of the lessees' interest. It is thus plain that the determination of the lease in the instant case amounts to acquisition by the State within meaning of Article 31-A. In *Ajit Singh's case Ajit Singh Vs. State of Punjab and Another*, the Supreme Court further held that the phrase "acquisition by the State of an estate" in the second proviso has the same meaning it has in the main provision of Article 31-A. The Thekedari Abolition Act would be "a law making provision for acquisition by the State of an estate" within Article 31-A as well as the second proviso.

33. The land contemplated by the second proviso cannot be acquired except on payment of compensation at the market rate. Learned counsel for the petitioner contended that the Thekedari Abolition Act does not really pay any compensation, the provisions therefore being illusory. The learned counsel appearing for the State contested this, but however admitted that the Act does not seek to provide compensation at the market rate but, before the second proviso can apply, two conditions have to coexist. The land must be within the ceiling limit applicable to the lessee and secondly that land must be under personal cultivation.

34. In this State U. P. Imposition of Ceiling on Land Holdings Act, 1960 came into force on January 3, 1961. It extended to the whole of Uttar Pradesh. It came into force at once in the whole of the State except in the areas mentioned in Section 2, where it would come into force from such date as may be notified. The portion

of Tarai and Bhabar sub-Division where no intermediary exists, is exempt from Section 2. In such portions of the Tarai and Bhabar Sub-Division the Act came into force on 3rd January, 1961. In any event, proceedings under that Act have been taken in respect of the land given to the petitioners by the Government under the lease dated 12th February, 1951. The Prescribed Authority by its order dated 29-9-1962 held that the lease shows that the total area leased out in both the villages was 1188.82 acres. After exempting the orchards, groves etc. which are exempted under the Ceiling Act, 348.82 acres were left, to which the provisions of ceiling would apply. Under the Act the petitioners would be entitled to 368 acres as their ceiling areas. Thus the entire land covered by the lease was within the ceiling limits and no land was held to be surplus with the petitioner.

35. For the respondents it was urged that the U. P. Imposition of Ceiling on Land Holdings Act will not apply to land covered by leases made by the Government under the Government Grants Act, 1895. Under Sections 2 and 3 of that Act, the Transfer of Property Act or the U. P. Tenancy Act were not applicable to lands which are the subject of a grant or transfer under that Act. The Government Grants (U. P. Amendment) Act, 1959 repealed and re-enacted Sections 2 and 3 of the Government Grants Act, 1895. After the amendment nothing contained in the Transfer of Property Act, 1882, the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act 1956, the Jaunsar-Bawar Zamindari Abolition and Land Reforms Act. 1956, the U. P. Tenancy Act. 1939 or any other law for the time being in force, shall apply or be deemed to have ever applied to any grant or transfer of land or of any interest therein made by the government in favour of any person. u/s 3 the grant or transfer was to take effect according to its tenor notwithstanding these laws or any decree or any direction of the court of law.

36. After the passing of this amending Act, it was felt that Section 2 as amended was likely to affect the operation of the law for imposition of ceiling on land holding that might be made in future. It was also apprehended that the language of Section 2 may undo the vesting of estates of Government grantees u/s 4 of the U. P. Zamindari Abolition Land Reforms Act, 1950. With a view to remove these misgivings the Government Grants Act, 1895 was amended again, by the Government Grants (U. P. Amendment) Act, 1960. Sections 2 and 3 of the Act were again substituted and were deemed always to have been substituted. So substituted Section 2 provided that nothing contained in the U. P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926, shall affect or be deemed to have ever affected any rights, created, conferred or granted by leases of land made by the Government in favour of any person. Section 3 of the 1960 Amendment Act repealed the Amending Act 9 of 1959 with effect from the date of its enforcement. The 1959 Act was deemed to have been so repealed as if it has no force or effect at any time whatsoever. The position was as if the 1959 Act had never been enacted.

Sub-section (3) of Section 2 after its amendment in 1960 was as follows:

"(3) Certain leases made by or on behalf of the Government to take effect according to their tenor--All provisions restrictions, conditions and limitations contained in any such creation, conferment or grant referred in Section 2, shall be valid and take effect according to their tenor any decree or direction of a court of law or any rule of law, statute or enactment of the Legislature to the contrary notwithstanding:

Provided that nothing in this section shall prevent, or be deemed ever to have prevented, the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural land.""

So, a lease made by the Government under the Government Grants Act was made subservient to the effect of any enactment relating to land reforms or the imposition of ceiling on agricultural land. It is, therefore, not correct that the law relating to the imposition of ceiling was not to apply to the lands of the petitioners leased out to them under the Government Grants Act. Consequently, the effect of the second proviso of Article 31-A of the Constitution cannot be avoided on this ground.

37. Under Clause (b) of Section 4 of the Thekedari Abolition Act, a maximum of 30 acres of such portions of the leased land as have been brought by the lessee under his personal cultivation are left with him and the lessee becomes the hereditary tenant of such land. It is obvious that this provision is not correlated to the ceiling limit of the lessee. No amendment was introduced in it after the coming into force of the Ceiling Act in 1961. It still provides for a maximum of 30 acres only. Under the Imposition of Ceiling on Land Holdings Act, the minimum ceiling area of a tenure-holder is 40 acres of fair quality land (vide Section 4 (2) (a) of the Act). Under Clause (b) of Section 4 (2) if the tenure-holder has a family having more than five members, the ceiling area shall be 40 acres together with 8 acres of fair quality of land for every additional member of the family, subject to the maximum of 24 such acres. Thus the ceiling area varies between 40 and 64 acres for every tenure-holder.

38. Moreover, the provision in Section 4 (b) of the Act for leasing up to 30 acres in the shape of a hereditary tenancy really does not go to feed the 2nd proviso. Under the Act, the lease as a whole is extinguished and the entire land including that under personal cultivation is acquired. The conferring of hereditary tenancy rights for a part of the acquired land has not been suggested to be providing for compensation at the market rate. The hereditary tenancy was not suggested to be of the same value as the rights under the original lease. It is thus clear that the Thekedari Abolition Act seeks also to acquire land under personal cultivation and within the ceiling limit of the lessees, without providing for payment of compensation at the market rate.

39. Is the Act severable Could its application or enforcement be restricted to valid part only; viz. the part of leased lands which are not within the ceiling limit? I think not. The principles of severability were summarised by Venkatarama Aiyer

J. in the leading case of *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, thus:

"1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be supplied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. Vide *Corpus Juris Secundum*, Vol. 82, p. 1663 *Sutherland on Statutory Construction*, Vol. 2, pp. 176-177.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide *Cooley's Constitutional Limitations*, Vol. 1, at pp. 360-361; *Crawford on Statutory Construction*, pages 217-218.

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole then also the invalidity of a part will result in the failure of the whole. Vide *Crawford on Statutory Construction*, pp. 218-219.

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections (vide *Cooley's Constitutional Limitations*, Vol. 1 pp. 361-362); it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation, Vide *Sutherland on Statutory Construction*, Vol. 2, p. 194.

7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the preamble to it. Vide *Sutherland on Statutory Construction*, Vol. 2, pp. 177-178."

The Act makes a single scheme which is intended to be operative as a whole. Then, it cannot be predicated that the legislature would have passed this Act, if it had considered that lands under personal cultivation and within ceiling limit

cannot be acquired under the existing provisions for compensation. If the Act is held inapplicable to such limit, the result will be that the lease would remain in force and the thekedar or the lessee would continue his old rights, in such lands. It cannot be said that the legislature would have agreed to a piecemeal determination of the lease, as that would not have fulfilled the purpose of introducing land reforms in respect of those parts of the land for which the lease remained in force. The Act, in my opinion, is not severable.

40. The Act violates the second proviso to Article 31-A. That proviso came into force on 20th June, 1964. With effect from that date, the Thekedari Abolition Act became void and inoperative. The State Government hence had no power to determine the petitioner's lease after 20th June, 1964, under that Act. The impugned notification dated 30th June, 1966, does not have the force of law and is void.

41. The last submission raised on behalf of the petitioners was that the Thekedari Abolition Act does not profess to pay what may be called compensation at all. The compensation for the determined lease was nothing but illusory. The Act consequently infringed Article 31(2) of the Constitution. The short answer is that the Act being covered by Article 31-A, is completely protected by Article 31-A from being affected by Article 14, 19 or 31.

42. In the result, the petitions succeed and are allowed. The U. P. Government Estates Thekedari Abolition Act No. 1 of 1959 is declared to have become unconstitutional and void with effect from 20-6-1964. The impugned notification dated 30th June, 1966 issued by the State Government determining the petitioners' lease and also the notice issued by the Deputy Commissioner, Naini Tal are quashed. The petitioners will be entitled to their costs which are assessed at Rs. 500/- in each case.