

(1984) 04 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No's. 173, 541 and 1036 and 1869 and 2030 of 1983

Janabai and etc.

APPELLANT

Vs

Laxman Gunaji Wanole and Another, etc.

RESPONDENT

Date of Decision : 23-04-1984

Acts Referred:

Constitution of India, 1950 — Article 31

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 5

Citation : AIR 1985 Bom 290 : (1985) MhLj 265

Hon'ble Judges : Dhabe, J

Bench : Single Bench

Advocate : R.R. and S.R. Deshpande, A.M. Bapat, S.A. Jaiwaland and P.S. Badiye, for the Appellant; B.T. Patil, B.P. Jaiswal, A.A. Desai, S.P. Patey and V.V. Naik, A.G.Ps, for the Respondent

Judgement

1. This is a group of writ petitions in which the petitioners, who are non-tribals, challenge the validity of S. 5A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short, "the Act") on the ground that it is violative of the second proviso to Art. 31A(1) of the Constitution of India (for short, "the Constitution").

2. I find the whole Act including the Amending Act, by which S. 5A was introduced was challenged in several petitions in this Court, including these writ petitions on the ground that it infringed the fundamental rights of the petitioners under Art. 14 and the then existing Art. 19(1)(f) and Art. 31 which were deleted only by the Constitution (forty-fourth Amendment) Act, 1978. The validity of the Constitution (Fortieth Amendment) Act, 1976, by which the original Act was introduced, was also challenged on the ground that it destroys or damages the basic structure of the Constitution. All these challenges were considered and repelled by me in my previous judgment dt. 29/30-3-1984 in Writ Petitions Nos. 1590 of 1977, 1099 of 1980 and 1444 of 1980 in which I held that the impugned Act (original Act) of the Constitution. The challenges to the validity of S. 5A of the Act was not then considered by me because in those writ petitions the

question about the vesting of the land in the State did not arise since under the impugned orders in those writ petitions the land was transferred from the non-tribal to the tribal who accepted the transfer. When one of these five Writ petitions, vis., the Writ Petition No. 541 of 1978, was placed for admission a rule was issued and the notice was directed to be issued to the Advocate General on 4-4-1984. Thereafter rule was issued in all the remaining four writ petitions. When these cases were listed for final hearing, the learned counsel for the State, Shri A.A. Desai, Advocate, appearing for the Advocate General in Writ petition No. 541 of 1978, accepted the notice for the Advocate General in all the other connected petitions.

3. It is not necessary to state in detail the facts in these connected writ petitions because for the purpose of the sole contention canvassed before me in these petitions suffice it to say that in all these petitions the tribal transferor was unwilling to cultivate the suit lands personally and to pay the purchase price as would be determined under S. 3(4) of the Act, and therefore, the learned authorities under the Act directed under S. 5A(1) of the Act that the suit lands be taken possession of from the non-tribals in these petitions and that they be vested in the State Government, free from all encumbrances. The sole contention raised before me is whether S. 5A(1) of the Act infringes the second proviso to Art. 31A(1) of the Constitution.

4. It is worthwhile to notice at this stage that S. 5A was introduced in the Act, i.e. Act No. XIV of 1975, by the Maharashtra Land Revenue Code, 1966 and the Maharashtra Restoration of Lands to Scheduled Tribes (Second Amendment) Act, 1976 (for short, "The Amending Act No. XXX of 1977") which came into force with effect from 16-8-1977 as per notification of the State Government issued under S. 1(2) of the said Act, after having received the assent of the President on 24-6-1977. However, S. 5A is made retrospective in operation from the date the Act i.e. the original Act No. XIV of 1975 came into force. It is not in dispute that the Amending Act No. XXX of 1977 is not up till now included in the Ninth Schedule of the Constitution. Had it been included in the Ninth Schedule, it would have been immune from the challenge that it is inconsistent with or take away or abridges any of the fundamental rights conferred by Part III of the Constitution because of the protective umbrella of Art. 31B. It would have been then immune from the challenge under the second proviso to Art 31A(1) of the Constitution which confers a fundamental right upon the persons covered thereunder. Since such an immunity cannot be granted to the Amending Act No. XXX of 1977 in the absence of its conclusion in the Ninth Schedule to the Constitution the constitutional validity of S. 5A introduced by the said Amending Act is open to challenge under the second proviso to Art. 31A(1) of the Constitution.

5. As already state, Art 31A(1) prior to its amendment by the Constitution (Forty-fourth Amendment) Act, 1978, protected the laws relating to agrarian reforms covered thereunder from the challenge of the fundamental rights under Arts. 14, 19 or 31 of the Constitution. In cl. (a) of Art. 31A(1) the law which is protected is

a law relating to the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights. The expression "estate" and "rights in estate" are defined in Art. 31A(2)(a) & (b) of the Constitution. The first proviso to Art 31A(1) requires that any law of the State Legislature to fall under the protective umbrella of Art. 31A(1) should be assented to by the president. The second proviso to Art 31A(1) further provides 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 the rate which shall not be less than the market value thereof.

6. Thus the conditions for the applicability of the second proviso to Art. 31A(1) are that.

(a) the law is for acquisition by the State of any estate;

(b) the land comprised in the said estate is held by the person concerned under his personal cultivation;

(c) the said land or any portion of such land to be acquired is within the ceiling limit applicable to him under any law for the time being in force.

If all the above three conditions are satisfied, it is not open to the State to acquire any such land or any portion thereof or any building or structure standing thereon unless such law provides for payment of compensation at a rate which shall not be less than the market value thereof. It is thus clear that there is an injunction against the State in the second proviso to Art. 31A(1) because of which it is not open to the State to acquire any agricultural land which is cultivated personally and which is within the ceiling limit applicable to the same unless the law of acquisition by the State of any such estate or agricultural land provides for payment of compensation at a rate which is not less than the market value thereof.

7. Although the language of the second proviso shows that it is essentially an injunction against the State, the effect of second proviso is that it confers a fundamental right upon the person who is cultivating the land personally and whose land which is within the ceiling limit is sought to be acquired by the State. This is the view which the Supreme Court has taken in the case of *Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another*, .

8. It may be seen that the second proviso to Art. 31A(1) was introduced in the Constitution by the Constitution (Seventeenth Amendment) Act, 1964 prior to which any law relating to acquisition by the State of the estate comprising land whether below or above the ceiling limit was immune from the challenge of Art.

31(2) because of the protective umbrella of Art, 31A(1) with the result that it was not obligatory upon the State to pay any compensation for the acquisition of the same. It was, however, though necessary that the agricultural land which is cultivated personally and which is within the ceiling limit should be protected and the person whose such land is acquired by the State should be paid the compensation at a rate not less than the market value thereof. The second proviso was, therefore, introduced in Art. 31A(1) under which the immunity of the State from payment of compensation for acquisition of any estate covered under Art. 31A(1) was abridged and an obligation was cast upon the State thereunder to provide in the law of acquisition of an estate for the payment of compensation at a rate not less than the market value for acquisition of land thereunder which is under personal cultivation and which is within the ceiling limit prescribed by any law in regard thereto.

9. The object underlying the second proviso to Art. 31A(1) is quite obvious because of the ceiling laws in the States. The Agricultural lands above the ceiling limit are declared surplus and are acquired by and vest in the State under the ceiling laws. The persons having the land above the ceiling limit lose the same for a meagre compensation provided under the ceiling laws. The second proviso therefore, provides that at least in the case of acquisition of lands of any person below the ceiling limit such agriculturists must be ensured the compensation not less than the market rate. Even otherwise it is but natural that if a person is to be deprived by acquisition of his small holding within the ceiling limit or portion thereof resulting in adversely affecting his source of livelihood he should be paid adequate compensation for deprivation of such property. (See *Ajit Singh Vs. State of Punjab and Another*,

10. As held by the Supreme Court in *Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another*, vide para 8 of the report, the second proviso to Art. 31A(1) is also couched in negative language like cls. (1) and (2) of Art. 31. It impose fetter upon the exercise of the legislative power of the State by providing that the State shall not be competent to make a law for acquisition of an estate covered by the second proviso to Art. 31A(1) unless the said law provides for payment of compensation, at a rate not less than the market value and that limitation is the measure of the fundamental right conferred on the owner of the land coming, within the purview of the second proviso to Art. 31A(1). By making the legislative power of the State subject to payment of compensation at a rate not less than the market value the second proviso to Art. 31A(1) guarantees protection to the owner against acquisition of that portion of his land which is within the ceiling limit except on payment of compensation at a rate not less than the market value of such land, and, to that extend, it confers a right property on a person holding land under his personal cultivation within the ceiling limit. It is thus that a fundamental right is conferred by the second proviso to Art. 31A(1) upon the person who holds under his personal cultivation land which is within ceiling limit by providing that such land which is within ceiling limits cannot be acquired by the State unless the law for acquisition of

such land provides for payment of compensation at a rate not less than the market value. It may be seen that the above right conferred under the second proviso to Art. 31A(1) is better and more valuable right as compared to Art. 31A(1) which did not guarantee payment of a market price for the acquisition of property by the State for a public purpose.

11. Turning to the provisions of S. 5A of the Act, sub-sec. (1) thereof provides that where any land (not being land acquired in exchange) which is liable to be restored to a tribal-transfer under sub-sec. (1) of S. 3 cannot be so restored either on account of the failure of the tribal-transfer to give an undertaking referred to sub-sec. (3) of S. 3 or for any reason whatsoever or where any land referred to in S. 4 cannot be restored to the Tribal by reason of such tribal expressing, during the inquiry held by the Collector, his unwillingness to refund the purchase price or proportionate part thereof to the non-tribal transferee, as required by the said S. 4 or for any other reason, then, the Collector, may subject to rules, if any, made the land shall, with effect from the date of the order, be deemed to have been acquired and vest in the State Government free from all encumbrance. It is thus clear from the above provision of S. 5A(1) that the land which the tribal-transfer is not ready to cultivate personally or of which he is not ready to refund purchase price as determined by the Collector is deemed to have been acquired by the State and the said land vests in the State Government free from all encumbrances, from the date of the order or the Collector.

12. The question, therefore, to be considered is whether the land of the non-tribal which is deemed to have been acquired by the State Government and which vests in the State free from all encumbrances on failure of the tribal transferor to get the same in view of his unwillingness to cultivate the same personally and to pay its purchase price amounts to acquisition of his estate by the State within the meaning of the second proviso to Art. 31A(1) of the Constitution. In considering this question a brief reference to the scheme of Ss. 3 and 4 read with the definition of the word "transfer" given in S. 2(1)(I) of the Act would be useful. It is clear from the definition of the word "transfer" given in S. 2(1)(I) of the Act that it contemplates the transfers which are valid, the only restriction being the transfers which are valid, the only restriction being that the transfers contemplated therein of the land belonging to the tribal in favour of non-tribal are during the period from 1-4-1957 to 6-7-1974. That the transfer contemplated is a valid transfer is clear from the exclusion clause according to which a transfer of land failing under the provisions of sub-s. (3) of S. 36 of the Code is excluded from the definition of the word "transfer" under the Act. A perusal of the proviso to sub-sec. (3) of S. 36 would show that the said proviso is in respect of the transfer of land from a tribal to a non-tribal effected in contravention of sub-sec. (2) of S. 36 of the Code or any other law for the time being in force in any time before the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 by which the said proviso was introduced in S. 36 of the Code.

12A. The transfer contemplated by S. 2(1)(I) is a valid transfer is also clear from the relief cl. (ii) in sub-sec. (1) of S. 3 in which the transfer of the holding of the tribal to the non-tribal is not declared illegal or invalid although the Collector is empowered thereunder to direct that the land of the tribal transferor transferred during the period from 1-4-1957 to 6-7-1974 to the non-tribal transferee be taken possession of from the non-tribal transferee and be restored to the tribal transferor, subject of course to the condition that the tribal transferor is ready and willing to cultivate the said land personally and is also ready to pay its purchase price as determined by the Collector.

12B. Similarly, perusal of S. 4 of the Act would show that the non-tribal had a valid tenancy of the field belonging to the tribal and that under the provisions of the Tenancy Laws he became its statutory owner on the tillers day. Here also as in S. 3 the title of the non-tribal is legal and valid although under the provisions of S. 4 like S. 3 by the reason of the said statutory provisions the land is required to be restored to the tribal transferor. The above scheme of the Act that it deals with valid transfers is clearly supported by its objects and reasons and preamble. The relevant portion of its objects and reasons being,

"It was noticed that in a number of cases lands previously held be persons belonging to Scheduled Tribes have been transferred to non-Tribals as a result of purchases made or deemed to have been made under the Tenancy Laws or as a result of transfers (including exchanges) validly effected after 1st April 1957 under the provisions of the Maharashtra Land Revenue Code, 1966 or other laws in force in the State"

13. It is thus clear that the land which vests in the State Government under S. 5A(1) of the Act on failure of the tribal transferor to get the same under Ss. 3 and 4 of the Act is the land which had legally and validly vested in the non-tribal. The scheme of the above provisions including S. 5A(1) of the Act leaves no manner of doubt that the non-tribal transferee in whom the land had vested validly is divested of the same by the State by its acquisition as per the provisions of S. 5A(1) of the Act. Such an acquisition by the State amounts to the acquisition of an "estate" as defined in Art. 31A(2)(a) of the Constitution and is, therefore, clearly within the mischief of the second proviso to Art. 31A(1) of the Constitution if the other requirements of the said provision are satisfied.

14. It has been held in the case of *Ajit Singh Vs. State of Punjab and Another*, , that the concept of acquisition in the second proviso to Art. 31A(1) is the same as in sub-cl. (a) of Art. 31A(1). It is further held in the said case that the concept of acquisition in sub-cl. (a) of Art. 31A(1) is not governed by the provisions of cl. (2A) of Art. 31 of the Constitution as under the present sub-clause the title of ownership need not always formally be transferred to the State. According to the said judgment, to claim the protection of Art. 31A(1) it would suffice if the substantial interest in the property has been transferred to the State, directly or indirectly. However, so far as S. 5A(1) is concerned the test of transfer of ownership of the estate is itself satisfied. The non-tribal transferee on an order

being passed by the Collector under S. 5A(1) loses his valid title in the land and the said title vests in the State upon an order being passed by the Collector under S. 5A(1) of the Act, and but for the provisions of S. 5A(1), on the failure of the tribal transferor to accept the land on the conditions prescribed in Ss. 3 and 4 the land would have continued to vest validly in the non-tribal transferee. S. 5A(1) thus clearly enacts a law relating to acquisition by the State of the estate or land of a non-tribal transferee within the meaning of sub-cl. (a) of Art. 31A(1) and its second proviso.

15. As regards the acquisition by the State it is urged that the acquisition is for the purpose of transferring the land to other tribals as provided in sub-sec. (3) of S. 5A of the Act and, therefore, is not hit by the second proviso to Art. 31A(1) of the Constitution. It is clear that the second proviso to Art. 31A(1) is not concerned with the purpose of acquisition but with the fact of acquisition by the State of any estate as contemplated therein. Therefore, although the purpose may be a benevolent purpose, and the land may be acquired as a welfare measure relating to agrarian reform, still it being a land under personal cultivation within the ceiling limit, the second proviso casts an obligation upon the State to provide for the compensation at a rate not less than its market value before its acquisition.

16. Proceeding now to sub-sec. (2) of s. 5A it is clear that the compensation which is offered by the State for acquisition of such land of the non-tribal transferee under sub-sec. (1) of S. 5A is equal to an amount which is 48 times the assessment of the land plus the value of the improvement, if any, made by the non-tribal transferee therein. If the said offer by the State of the compensation payable under S. 5A(2) of the Act does not represent the market value within the meaning of the second proviso to Art. 31A(1), the question would be whether the acquisition by the State as per S. 5A(1) is hit by the second proviso to Art. 31(1).

17. It is faintly urged by the learned counsel for the State that the compensation offered at the rate equal to 48 times the assessment represents the market value for the land. The said submission is merely stated to be rejected. The market value cannot be uniform for all types or qualities of lands which are deemed to be acquired by the State and which vest in the State free from all encumbrances under S. 5A(1) of the Act. It is further our common experience that even for the same land the market price increases after a period of time. There cannot, therefore, be a uniform standard for determination of the market value.

18. It may be seen the concept of market value is well known. The market value of the land has to be taken to be the amount which the land if sold in the open market by willing seller might be expected to realise from a willing purchaser having due regard to its existing condition with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner. See *Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another*,

In *Olson v. U.S.* (1034) 292 U.S. 246 it is held that the value in the open market means such amount as land might be expected to realise if offered under conditions enabling every person desirous of purchasing to come in and make an offer and if proper steps are taken to advertise the property and let all likely purchasers know that the land is in the market for sale. It is thus clear that the market price depends upon several factors and cannot be uniform as provided under S. 5A(2) of the Act.

19. it is implicit in the second proviso to Art. 31A(1) that the market price contemplated therein is the price at the time when the acquisition is made by the State. Any law of acquisition within is mischief must, therefore, provide for compensation with reference to that date. In these cases the acquisition of the land is being made many years after the assessment of the land revenue upon it. It cannot be, therefore, gainsaid that the amount equal to 48 times the assessment of land plus the costs of improvements, if any, made by the non-tribal in the land in question cannot represent on the date of acquisition its market value since the land revenue had been assessed many years back and since then it is common experience that the market value of the land has increased by leaps and bounds. As regards the costs of improvement, if any, made by the non-tribal, they are the actual expenses incurred towards improvements and cannot be included in the market value of the land as such. It is thus clear that the price officered under s. 5A(1) of the Act does not satisfy the requirement of the second proviso to Art. 31A(1) which prescribes a condition precedent that the holding of a person under his personal cultivation which is within the ceiling limit cannot be acquired unless it is provided in the law of its acquisition that he would be paid compensation at a rate not less than its market price.

20. It is well settled in the cases arising under Art. 31(2) of the Constitution that compensation which has to be offered must be fixed with reference on the date of acquisition of the property. In *The State of West Bengal Vs. Bela Banerjee and Others*, of the report the amount of compensation for acquisition of land fixed with reference to the market value of the land on an anterior fixed date under the West Bengal Land Development and Planning Act, 1948 was held to be value not on the date of acquisition. It was further held that fixing the anterior date for ascertainment of value particularly when the land is acquired many years after the said date is arbitrary. It was also observed referring to the observations of the Calcutta High Court that it was common knowledge that since the end of the war land particularly around Calcutta had increased enormously in value and might still further increase very considerably in value when the pace of industrialisation increased. It is thus clear that for ascertainment of the market value on the date of acquisition there cannot be a fixed measure of compensation with reference to an anterior date.

21. The case of *Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma*, is case which is much closer to the facts in the instant case.

It was a case where the question of market value was relevant because it was in relation to Art. 31(2) as it stood prior to the Constitution (Fourth Amendment) Act, 1955. The validity of Assam Acquisition of Land for Flood Control and Prevention of Erosion Act was challenged under Art. 31(2) of the Constitution on the ground that for acquisition of land no adequate compensation as contemplated by the expression "just equivalent" was provided thereunder. S. 6(1) of the said Act provided payment of compensation at the rate of 40 times the annual land revenue in case of periodical patta land and 15 times the annual land revenue in case of the annual patta land. The Supreme Court observed in para 17 of the judgement cited supra that the State of Assam made no attempt to show that a multiple of land revenue payable for the land is just equivalent of or has any relation to the market value of the land on the date of the acquisition. In further observed that it was well known that since the assessment of land revenue in Assam many years ago the market value of lands had increased by leaps and bounds. The Supreme Court held that although the later part of S. 6(1) of the Act (ibid) makes a pretence of saying that in determining the compensation the Collector shall take into account the value of the land as at the date of the acquisition and other factors, the same was meaningless considering that under the first part of S. 6(1) it was provided that the compensation should not exceed the fixed multiple of the annual land revenue. The observations in the above case that the State has failed to prove how the fixed multiple of land revenue assessed some years back represents the market value on the date of the acquisition and that it is common knowledge that the market value of the land has increased by leaps and bounds since the assessment of land revenue equally and aptly apply in the instant case also.

22. The above two decisions of the Supreme Court thus clearly support the view that by providing compensation at the rate equal to 48 times the assessment of land revenue plus the cost of improvements under S. 5A(2) of the Act the State is not offering on the date of acquisition compensation at the rate of the market value of the land which at least the State must provide in a law of acquisition of an estate comprising land which is under personal cultivation and which is within ceiling limit as contemplated by the second proviso to Art. 31A(1) of the Constitution.

23. It is thus clear from the provisions of sub-sec. (2) of S. 5A that it does not provide for payment of compensation at least at the market rate in cases of lands, which are personally cultivated by the non tribal transferee and which are within the ceiling limit as contemplated by the second proviso to Art. 31A(1) of the Constitution. If that is so the question would be whether the acquisition of such land which is within ceiling limit and which is under personal cultivation of the non-tribal transferee can be still valid under sub-sec. (1) of S. 5A. The submission on behalf of the State is that sub-sec. (1) of S. 5A will not be bad and it is only sub-sec. (2) of S. 5A which may be bad for non-compliance with the requirement of the second proviso to Art. 31A(1) of the Constitution.

24. However, the language of the second proviso to Art, 31A(1) which is compulsive is against such construction. The second proviso to Art 31A(1) enacts a condition precedent insofar as it requires that the State must provide in the law of acquisition the payment of compensation at the rate not less than the market value before it acquires the land protected thereunder. Thus, unless there is a provision for payment of compensation at a rate not less than the market rate to the lands covered by the second proviso to Art. 31A(1) the States has no power to acquire such land. It may be seen at this stage that if under the Act the compensation at a rate not less than the market value is not provided for a contemplated by the second proviso by Art, 31A(1) the Court has no power to fix and to direct the State to pay the same. It may be pertinently seen that the proviso to Art. 31A(1), contemplated fixation of compensation in the law of acquisition of the land in certain cases at a rate higher than the market rate. It is, therefore, necessary for the state as its legislative policy to provide for a compensation in the law of acquisition which as contemplated by the second proviso to Art. 31A(1) cannot be less than the market value of the land and unless such compensation is provided for in the law of acquisition by the State it is not open to the State to acquire the land contemplated by the second proviso to Art. 31(1). The above submission on behalf of the State that by not providing the compensation at a rate not less than the market value the provisions of S. 5A(2) would be bad but the acquisition of the land under S. 5A(1) should be held to be good cannot, therefore, be accepted.

25. As a result of the above discussion it has to be held that S. 5A of the Act cannot be enforced against the persons cannot be enforced who hold land under their personal cultivation within the ceiling limit prescribed in the State since their fundamental right guaranteed under the second proviso to Art. 31A(1) is contravened by the State in not providing under S. 5A(2) of the Act a payment of compensation to them at a rate not less than the market value.

26. However, the question whether the not-tribal transferees in the instant petitions are cultivating the land personally and whether the lands which are acquired are within the ceiling limit applicable to them are questions of fact, which have to be determined by the authorities below. If the above two ingredients of the second proviso to Art. 31A(1), viz, the lands sought to be acquired being under personal cultivation and being within the ceiling limit, the provisions of Section 5A(1) cannot be enforced against them.

27. It is relevant to notice at this stage that the original ceiling limit fixed in the State of Maharashtra in 1961 was drastically reduced by the Amending Act No. 21 of 1975. It may also be noticed that the ceiling limit was drastically reduced not only in the State of Maharashtra but in other States also as it was done pursuant to a policy decision taken in the conference of the Chief Ministers of all the States in 1971. As such, the ceiling limit was already lowered when the proceedings under the Act for restoration of the lands of the non-tribal to the tribal commenced under the Act. It is, therefore, possible that many of the non-

tribal agriculturists like the petitioners were holding land below the ceiling limit when the orders were passed under S. 5A(1) vesting their lands in the State. I may also state that in many of these cases, including these writ petitions, the non-tribal agriculturists alleged that they would be rendered landless if their lands are taken possession of from them which would show that they are poor agriculturists holding land below the ceiling limit. Some of these agriculturists belong to the weaker sections of the community as they belong to the Scheduled Castes. In these circumstances, it is necessary to make a proper enquiry as stated above before the provisions of S. 5A(1) are enforced against the non-tribal agriculturists in these petitions.

28. In the result, the writ petitions are allowed. The impugned orders are set aside. The proceedings are remanded to the trial Court for any enquiry into the questions whether the petitioners are cultivating the lands personally and whether their lands sought to be acquired by the State under S. 5A(1) are within the ceiling limit fixed under the ceiling law in the State. If the trial Court comes to a conclusion in favour of the petitioners upon the above questions the Trial Court is restrained from enforcing the provisions of S. 5A(1) against them. Otherwise, it is open to the trial Court to pass appropriate orders under S. 5A(1) of the Act. Rule made absolute in the above terms. However, there would be no orders as to costs.

29. Petitions Allowed