

(1960) 11 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 342 of 1960

Joshi Jayantilal Laxmishankar

APPELLANT

Vs

The Gujarat State and Others

RESPONDENT

Date of Decision : 28-11-1960

Acts Referred:

Bombay (Saurashtra Area) Aghat Tenure and Ijaras Abolition Act, 1959 — Section 4, 4(1)
Bombay Land Revenue Code, 1879 — Section 3(5)
Constitution of India, 1950 — Article 14, 31, 31A, 31A(2)

Citation : AIR 1962 Guj 297 : (1961) 2 GLR 454

Hon'ble Judges : V.B. Raju, J;J.M. Shelat, J

Bench : Division Bench

Advocate : A.V. Modi and S.C. Joshi, for the Appellant; A.G. and B.R. Sompura, Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Shelat, J.—By a deed of Ijara dated June 4, 1936, the then ruler of the State of Navanagar granted to the petitioner's father lands admeasuring 2300 acres situate in the villages Vadala and Pata Meghpar in consideration of the grantee paying a sum of Rs. 4128-4-0 as annual assessment. It appears that after the grant was made the petitioner had several tenants settled on those lands and a village called Juvanpur was established there. It appears from Clause (5) of the Deed of Ijara that about 102 acres and 37 Gunthas, out of the 2300 acres were cultivable lands and were in fact cultivated by tenants residing in Mota Vadala and Pata Meghpar. The grantee was allowed to have the Services of these tenants for the first year but thereafter he was to engage other tenants and have them settled on these lands. Clause (7) of the Ijara provided that the amount of Butta rights for 14 years was to be credited to the names of the original tenants of Butta lands included in these 2300 acres. So far as the other lands were concerned, the grantee was permitted to have them converted into Butta lands whenever he applied to the State, the grantee was given the liberty to bring in

new tenants as also shephards Rabaris, etc. He had also a right to recover certain taxes, fees and imposts in consideration of his paying a sum of Rs. 251/- per year from S.Y. 1991 onwards. The grantee was also given liberty to cultivate the lands or have them cultivated on share basis, partnership basis or Uddhad Vadia. In Clause (21) it was provided that the grant was to commence from S. Y. 1992. Clause (26) provided that after the expiry of the-period of the Ijara., viz. 30 years, the grantee was to deliver back to the State all the lands which were the subject-matter of the Ijara except those in respect of which he had purchased the Butta rights. Clause (29) provided as follows:

"If you fail to pay the dues, of the State then the State has a right to forfeit the land. You are given the lease (Ijara) of this village under the above conditions and so you may develop the village and recover, the assessment until the period of lease (Ijara.) and in support of it, this document is executed".

The deed of Ijara is a composite instrument containing not only terms which are usually found In a deed of lease but also containing provisions which permit the grantee to settle a village thereupon, to cultivate lands either by himself or through tenants; to evict the tenants already on the land to establish his own tenants in their place and lastly, to levy certain fees, imposts and taxes upon them. As we have said, under Clause (7), the grantee was given the right to purchase Butta rights which would make him virtually an occupant of the land. Under Clause (26) the grantee was to hand over all the lands except "the land in respect of which he had purchased the Butta rights together with all the improvements made thereupon including houses, wells etc., to the State. The Ijara was to commerce from 1936 and it was to expire in 1966. Though Clause (29) of the deed calls the instrument a deed of lease, it is a composite document which permits the grantee not only to exploit the lands by cultivation but also to recover certain taxes from the tenants. The instrument, however, did not confer any occupancy rights to the grantee in the lands in question. It is not the petitioner's case also that he became an occupant of these lands by virtue of or under this instrument.

2. After the formation of the State of Saurashtra as a result of several covenanting States including the State of Nawanagar uniting into one State, the Government of the State of Saurashtra issued a resolution dated March 1, 1950. The resolution, amongst other things provided :

"The Government of Saurashtra has been pleased to order that occupancy rights as provided for in the Bombay Land Revenue Code, 1879, as adapted and applied to Saurashtra, be conferred upon the existing holders of the Khalsa lands without charging any price with effect from the date the said Code has come into force in Saurashtra".

3. By a Notification no. R. D. IV/6 dated August 4, 1950 issued u/s 35 of the Ordinance No. XLJ of 1949 the State Government directed that the village Juwanpur which was the subject-matter of the deed of Ijara in favour of the

petitioner should be brought under the management of the State Government. The petitioner challenged that order by lodging a writ petition in the High Court of Saurashtra. The order was declared null and void by a decision of the Full Bench of that High Court which is reported in *Jayantilal v. State of Saurashtra* AIR 1952 Sau, 59. The lands which formed the village Juwanpur have since then been in the possession of the petitioner.

4. Thereafter, Bombay Act LXV of 1959 called an Act to abolish the Aghat tenure and the Ijaras prevailing in the Saurashtra area of the State of Bombay was passed. It received the assent of the President on November 3, 1959 and was brought into force on December 1, 1959. The preamble of the Act recites that :

"whereas certain lands in the Saurashtra area of the State of Bombay are held on a tenure known as Aghat tenure and whereas certain lands in the said area are held on Ijaras granted therefor, and whereas in the public interest it is expedient to abolish the said Aghat tenure and Ijaras and to provide for the consequential and incidental matters hereinafter appearing, it is hereby enacted....."

Section 2(xiii) defines. "Ijara" as meaning a lease granted by the ruling authority of a Covenanting State before the integration of such State with, or, as the case may be, the merger thereof in the former State of Saurashtra. Clause (xiv) of Section 2 defines "Ijardar" as meaning the holder of an ijara land includes his co-sharer. Clause (xv) defines "ijara land" as meaning the land held on Ijara and includes an Ijara village. An Ijara has been defined in Clause (xvi) of Section 2 as meaning a village specified in the schedule and held on Ijara. The Schedule annexed to the Act mentions two villages, viz., Kanchanpur in Khambhalia Taluka and Juwanpur in Kalwad Taluka as Ijara villages. Section 3 of the Act provides that if any question arises (i) whether any land is an aghat land, or (ii) whether any person is a tenant, or (iii) whether the ijardar has Butta hak in any ijara land, the State Government or an officer authorised by the Government shall decide the question. Sub-clause (2) thereof provides for an appeal against a decision by an officer so authorised by the State Government. Sub-section (3) provides for revisional powers of the State Government in respect of such decisions and Sub-section (4) of Section 3 lays down that the decision of the State Government either in appeal or in revision and subject thereto the decision of the officer shall be final. Section 4 inter alia provides, that notwithstanding anything contained in an aghat sale deed, ijara, agreement, Sanad, order or usage or any decree or order of a Court or any law for the time being in force, with, effect on and from the appointed day, "(b) all ijaras shall be deemed to have been cancelled and all ijara lands resumed". Sub-section (1) (c) (ii) of Section 4 then provides:

"all rights of the ijardar under the ijara including the right to recover rent or assessment of land or to levy or recover any kind of tax, cess, fee, charge or any hak, legally subsisting on the said day shall be deemed to have been extinguished".

Section 6 deals with occupancy rights in respect of Ijara lands and provides that to the case of an ijara land if it is Gharkhed land the ijardar and if it is to the possession, of a tenant, such tenant, shall be primarily liable to the State Government for the payment of land revenue due in respect of the land held by him and shall, subject to the provisions of Sub-sections (2) (3) and (4) thereof, be entitled to all the rights and shall be liable to all the obligations in respect thereof as an occupant under the Code and the rules made thereunder. Section 6 of the Act thus provides that in the case of an Ijara land, if it or part of & is Gharkhed land, the Ijardar on the abolition of the ijara is to be treated as an occupant of such land, being subject to the revenue assessment payable in respect thereto to the State Government in accordance with the provisions of the Land Revenue Code, as adapted in Saurashtra and the rules made thereunder. Sub-section (2) of the section then provides that on the abolition of the ijara, in case of land referred to in Sub-section (1) (b), of that section, a tenant in consideration of his acquiring the occupancy rights, shall be liable to pay if the Ijardar has acquired Butta hak in respect of such land, occupancy price equal to six times the full assessment of such land to the Ijardar, and in any other case, occupancy price equal to three times the full assessment of such land to the ijardar and an occupancy price equal to three times the full assessment to the State Government within the prescribed period in lump sum or in such annual instalments may be prescribed. Section 9 of the Act then provides for the compensation payable to the ijardar in respects of all public roads, lanes and paths, bridges, ditches etc., lying and situate in Ijara lands and which would under the Act vest in the Government. Section 11 provides for the method of awarding such compensation. Lastly, Section 20 provides that an Ijardar should deliver to the officer authorised, by the state Government in that behalf all records relating to the Ijara land maintained by him.

5. In pursuance of the power contained, in Section 20 of the Act the Mamlatdar, Kalawad, being the officer so authorised, issued a notice to the petitioner dated May 11, 1960, directing the petitioner to hand over the records relating to the Ijara within 15 days from the date of the notice. The petitioner thereupon filed his objections to this notice on May 20, 1960.

6. The petitioner has challenged Act LXV of 1959 as bad and invalid on the following grounds:-

(1) That the Act is discriminatory inasmuch as it affects the rights of the Petitioner only and not the rights of the other occupants of lands in the State. The applicant is Occupant having acquired occupancy rights under the Resolution dated March 1, 1950 and also by reason of his having purchased Butta rights in respect of 1300 acres of land.

(2) That it deprives the applicant of his right to recover, arrears of rent or assessment on the land and that the acquisition of the right to recover such arrears of rent, taxes, cess or fees is outside the scope of a public purpose.

(3) That the Act does not provide for payment of compensation to the petitioner inasmuch as under Clause (5) of the deed of Ijara, the petitioner was liable to pay Rs. 2871-2-0 as assessment, whereas u/s 9 he would be entitled to compensation equal to three times the difference between the full assessment on the land and tile aggregate of the amount payable by the ijardar to the State Government as land revenue,

(4) That the Act has given away proprietary rights of one occupant to a tenant in order that such tenant may become an Occupant.

(5) That 50 per cent, of the total Compensation receivable under the Act is retained, by the State and only 50 per cent thereof is to be paid to the ijardar.

7. The petitioner also challenges the notice issued to him by the Mamlatdar u/s 20 of the Act on the ground (i) that he has purchased Butta rights of 1300 acres and therefore those lands are no longer ijara lands to which the Act can apply and (2) that in any event, under the resolution dated March 1, 1950, he has become an occupant of these lands within the meaning of the Land Revenue Code as applied to Saurashtra. These lands have, therefore, ceased to be ijara lands and consequently the impugned Act cannot apply to these lands.

8. As regards the first ground, para 4 of the reply of the first opponent contains an express denial of the petitioner having purchased Butta rights in respect of the 1300 acres. That para however contains an admission that the petitioner has acquired Butta rights in respect of 80 acres and 18 Gunthas and that those lands have already been allotted to the petitioner as Gharkhed lands, i.e., lands for personal cultivation, in spite of his allegation that he had purchased Butta rights in respect of these 1300 acres, the petitioner has not adduced any proof, regarding his purchase of Butta rights. If the petitioner had purchased these rights as alleged by him, he was at liberty to establish that fact in a proper proceeding. As we have pointed out, Section 3 of the Act which has not been expressly challenged in this petition, provides for a special forum to decide the question whether an ijardar has butta rights in any ijara land. If the petitioner desires to claim that he has acquired butta rights in respect of the ijara lands in question or any part thereof, he has to have that question adjudicated by that forum. In view of Section 3 of the Act and also the denial by the State, the High Court on a petition of this kind would not deal with such a disputed question.

9. As regards the second ground, the resolution dated March 1, 1950, cannot be said to have conferred any new rights upon the petitioner. What the resolution seeks to do is to direct revenue officers of the State to confer occupancy rights upon existing holders of Khalsa lands without charging any price for such rights from the date. The Bombay Land Revenue Code was brought into force in Saurashtra. There is nothing to show and it is not the case of the petitioner that he made any application for such rights or that thereupon his name was entered in pursuance of such application or the resolution, in the revenue records as a person holding occupancy rights in respect of these lands in supersession and

substitution of his rights as an ijardar under the deed of ijara. The very fact that the Act under challenge considers these lands as ijara lands also shows that the petitioner has not been conferred any such rights as an occupant of the lands which are still treated as ijara lands within the meaning of the Act. There is nothing before us to show that the lands which are the subject-matter of the deed of ijara were at any time turned into lands in respect of which the petitioner acquired occupancy rights within the meaning of the Bombay Land Revenue Code. We must, therefore, proceed upon the footing that these lands are ijara lands to which Act LXV of 1959, if held valid, would apply.

10. Though the Act is challenged on various grounds set out in para 10 of the petition, the learned counsel for the petitioner based his attack principally on one ground, viz., that the abolition sought to be effected of the petitioner's rights under the ijara and in respect of these lands amounts to deprivation of his rights and that that cannot be done validly unless the Legislature has enacted the Act for public purpose. It was contended that there are only 36 tenants on the lands and, therefore, it would be Impossible to say that the Act when it Seeks to benefit only such a limited number of persons is for a public purpose as contemplated by Article 31 of the Constitution. The learned counsel contended that the petitioner has a fundamental right under Articles 19 and 31 of the Constitution which he cannot be deprived of unless such deprivation takes place in accordance with the provisions of Article 31(2). He argued that the question whether there is a public purpose for which the impugned statute is enacted is a justiciable issue in which the High Court can go into and determine. He retted upon the decision of the Supreme Court in *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, , where the provisions contained in Section 4 (b) and Section 23(1) of the Bihar Land Reforms Act, XXX of 1950, were struck down as unconstitutional. In the course of their judgment, their Lordships Mahajan J. (as he then was) and Chandrasekhara Aiyar J. observed that:

"the scope of Article 33(4) is limited to the express provisions of Article 31(2) and though "the Courts cannot examine the extent or adequacy of the provisions of compensation contained in any law dealing with the acquisition or property compulsorily, yet the provisions of Article 31(4) do not in any way debar the Court from considering whether the acquisition is for a public purpose."

On the other hand it was observed by their Lordships, Patanjali Sastri C. J. and Pas J. that,

"the existence of a public purpose as a Pre-requisite to the exercise of the power of compulsory acquisition is an essential and integral pan of the provisions of Article 31(2) and an infringement of such a provision cannot be put forward as a ground for questioning the validity of ao ACT providing for compulsory acquisition". At page 935 of the Report (SCR) : (at p. 273 of AIR) Mahajan J. (as he then was) stated that,

"public purpose is an essential ingredient in the very definition of the expression "eminent domain" as given by Nichols and other constitutional writers, even though obligation to pay compensation is not a content of the definition but has been added to it by judicial interpretation. The exercise of the power to acquire compulsorily is conditional on the existence of a public purpose and that being so, this condition is not an express provision of Article 31(2) but exists aliunde in the content of the power itself and that in fact is the assumption upon which this clause of the article proceeds."

He observed that the provisions of Article 31(4) do not in any way touch powers of the court to see whether the acquisition has been made for public purpose the learned Assistant Government Pleader contended that the question whether there is a public purpose or not is not a justiciable question and in support of his statement relied upon a decision of the High Court of Gangadharrao Narayanrao Muzumdar and Others Vs. State of Bombay, . In that decision the learned Judges of that High Court felt that there was a difference of opinion between Mahajan J. (as he then was) and ChandraSekhara Avar J. on the one hand and the learned Chief Justice and Das J. on the other, and held that they were at liberty therefore to follow the view taken by the learned Chief Justice and Pas J. and held that the question as to whether there was a public purpose or not in enacting a particular statute was not a justiciable issue into which the High Court can go. This controversy must, however, be deemed to have been set at rest by one Supreme Court in Thakur Amar Singhji Vs. State of Rajasthan, , where the Rajasthan Land Reform and Resumption of Jagirs Act (Rajasthan Act VI of 1952) was challenged as invalid on a number of grounds. Amongst the grounds relied upon for challenging the Act, it was contended that the Act was ultra vires the powers of the State inasmuch as it did not provide for adequate compensation, nor was there any public purpose involved in it and, therefore, it contravened Article 31(2) and that as the Act was discriminatory it contravened Article 14 also. It was also argued that the Act was not saved by Article 31A because the lands resumed were neither estates nor jagirs, as defined in the Act and, therefore, the notifications u/s 21 of the Act in so far as they related to them were illegal so far as the contention as to resumption was concerned, it was held that such resumption was not in enforcement of the rights which the Rulers had to resume jagirs in accordance with the terms of the grant or the law applicable to it, but in exercise of the sovereign rights of eminent domain possessed by the State, and, therefore, the taking of the properties from the petitioner there was in substance acquisition notwithstanding that it was labelled as resumption in the Act. Dealing with Article 31A their Lordships found that the object in enacting Article 31A was to have legislation which was directed to the abolition of intermediaries and to establish direct relationship between the State and the tillers of the soil. Construing the word in that sense which would achieve that object in full measure, it was held that jagir was meant to cover all grants under which the grantees had only rights in respect of revenue and were not tillers of the soil. Maintenance grants in favour of persons who were not cultivators such as

members of the ruling family would be jagirs for purposes of Article 31A. The Supreme Court laid down that where Article 31A applied, objections raised as to the validity of the Act on the ground that It did not provide for payment of compensation, or that there was no public purpose involved in the resumption and that therefore it contravened Article 31(2) or that the provisions of the Act offended Article 14 were barred by Article 31A of the Constitution. In that case the Supreme Court also held that apart from Article 31A, the impugned Act must be held to be supported by public purpose and was not, therefore, in contravention of Article 31(2). The Act was also held to be not in contravention of Article 14 as under the Act all the jagirs were liable to be resumed, no power having been conferred on the Government to grant any exemption. In view of this decision, the decision of the High Court of Bombay reported In 56 Bom LR 1062 : ((S) Gangadharrao Narayanrao Muzumdar and Others Vs. State of Bombay, must be deemed to stand impliedly upheld. Consequently the contention that there is no public purpose and, therefore, the statute) in question is bad is barred once Article 31A was applicable.

11. As regards Mr. Modi's contention that u/s 4 (1) (c) (ii) even the right of the ijardar to recover arrears of rent or assessment has been sought to be taken away, we may observe that it has been conceded on behalf of the State that that sub-clause does not provide for taking away such a right. It has also, been so stated in the affidavit in reply filed on behalf of the State. The sub-clause provides that all rights of the ijardar under the Ijara including the right to recover rent or assessment of land or to levy or recover any kind of tax, cess fee, charge or any hak, legally subsisting on the said day shall be deemed to have been extinguished. It is obvious that what is sought to be extinguished under this sub-clause are the rights of the Sjardar legally subsisting on the appointed day including the. right to recover rent or assessment of land or to recover or levy any kind of tax. The words, "legally subsisting on the said day" in this sub-clause have reference to the words, "all rights of the ijardar under the Ijara"", a right to recover arrears, of rent is not strictly speaking a right under the ijara, for once the rent or assessment becomes due and payable, it ceases to be something recoverable under a right of an ijardar as such but becomes a debt in respect of which the relations between the tenant and the ijardar become those of a debtor and a creditor. Section 4(1)(c)(ii), therefore, does not refer to the right of an ijardar to collect such arrears of rent. Section 4, therefore, cannot be challenged on the footing that it seeks to extinguish a right of an ijardar to recover arrears of rent or that this provision therefore cannot be said to have any public purpose to support it.

12. The next question that has to be determined is whether the Act in question falls within the protection of Article 31A. The Act is limited in its operation to the area of Saurashtra in the State of Bombay because Aghat tenure and Ijaras in respect of lands existed in that area only. Therefore, there is no question of any discrimination in the sense that the Act applies to one particular area and not to the rest of the State of Bombay. We are not concerned in this petition with. The

abolition of Aghat tenure so much as the abolition of the ijaras. The ex-ruler of Navanagar had granted ijaras in respect of two villages specified in the Schedule annexed to the Act. The Act abolishes both, of them as also the other ijaras in respect of other lands. Section 4(l)(b) and (c) (ii) seeks to abolish the ijaras and the rights of the ijardars arising under them and Section 6 deals with the occupancy rights which are to vest on the extinguishment, of the rights under such ijaras. Once the rights under the ijaras are abolished and/or extinguished, the lands which are the subject-matter of such ijaras would be free for distribution and consequently that section provides as to how Occupancy rights in respect of such lands are to be conferred and on what terms. It is clear, therefore, that all ijaras whether they relate to ijara villages or lands and the rights thereunder are sought to be extinguished by Section 4 of the Act. As held, to Thakur Amar Singhji Vs. State of Rajasthan, : Thakur Amar Singhji Vs. State of Rajasthan, , there is no question of discrimination as all the ijaras relating to lands as also to ijara villages are sought to be brought to a" end and the State Government has not been given any power under the Act to exempt anyone or more of them. It is, therefore, not correct to say that only 36 tenants are the beneficiaries under the Act and, therefore, there is no public purpose to support the legislation in question. Since all the Aghat tenures and all the ijaras are sought to be abolished and the object of the enactment clearly was to do away with all the Intermediaries between the State and the tiller of the soil it would not be possible also to uphold the contention that there is no public purpose protecting the enactment or that only 36 individuals are intended to be benefited under this statute. It is clear from Section 6 of the Act which saves the occupancy rights of the ijardar in respect of Gharkhed land that the object of the Act is to leave the land to those who personally cultivate it and to do away with its exploitation by those who do not cultivate it but wish to make profit by having it cultivated and developed by others. As observed in The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, , the phrase "public purpose" has to be construed according to the spirit of the times in which a particular legislation is enacted and so construed, acquisition of estates for the purpose of preventing concentration of huge blocks of land in the hands of a few individuals or to do away with intermediaries is for a public purpose.

13. According to the petitioner under the ijara granted to him he held, the village of Juwanpur consisting of as much as 2300 acres of land. As we have observed the Ijara gave Mm rights to settle tenants thereupon, and to have the land exploited by cultivation or otherwise. It gave the Ijardar the right to exact rent, even certain taxes and other imposts during the period of the grant in consideration of his paying a lump sum to the Ruler annually. Since all lands vest in the State, there can be no doubt that the petitioner was an intermediary between the State and the cultivator except in respect of land which he personally cultivated and in respect of which Section 6 of the Act gave him the right to occupancy rights. The object of the Act being to do away with such intermediaries and their privileges to exploit the land, it must be held, apart from

Article 31A, that the purpose for enacting it was a public purpose.

14. The learned Counsel for the petitioner, however, contended that Article 31A did not apply to the Act as : (1) an Ijara is not an estate, and (2) that there is neither acquisition nor extinguishment of rights but that the Act amounts to pure and simple deprivation within the meaning of Article 31(1) and that consequently the Act is in violation of Article 19(f) and (g) and must be struck down. Article 31A(2) defines the expression "estate" as follows:

"(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any Jagir, Inam or Munafa or other similar grant and in, the States of Madras and Kerala, any Janmam right;

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

15. u/s 3(5) of the Bombay Land Revenue Code as applied to Saurashtra, an "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same. "Village" is defined in Section 3(21) as including a town or city and all the land belonging to a village, town or city. The rights arising under a grant whether in respect of revenue or land are rights in respect of such lands and therefore under the definition given in the Land Revenue Code would constitute an "estate". In ((S) Gangadharrao Narayanrao Muzumdar and Others Vs. State of Bombay, , the Division Bench of that High Court held that if there is any interest in land, whatever its nature, it would constitute "estate" within the meaning of the Bombay Land Revenue Code, 1879, and that the whole object and intention of amending the Constitution by inserting Article 31A therein was to provide for expropriation of such interest in land by the State. Similarly, while dealing with the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956- the Supreme Court in Sri Ram Ram Narain Medhi Vs. The State of Bombay, negated the contention that the Bombay Land Revenue Code was not a statute relating to tenures and that, therefore, an "estate" within the meaning of Article 31A(2) would not be the same as defined in the Code. Dealing with the contention Bhaawati, J., observed as follows:

"It was urged that the Code was passed by the State Legislature in order to consolidate and amend the law relating to Revenue Officers and to the assessment and recovery of Land Revenue and to other matters connected with the Land Revenue Administration in the Presidency of Bombay and was merely concerned with the collection of land revenue by the State and had nothing to do with land " tenures as such. This argument, however, ignores the various provisions of the Code which define the status as also the rights and obligations

of the occupant who has been defined 10 Section 3(16) of the Code to mean the holder in actual possession of unalienated lands other than a tenant provided that where the holder in actual possession is a tenant, the landholder or superior landlord, as the case may be, shall be deemed to be the occupant". After setting out the other provision of the and Revenue Code the learned Judge concluded that:

"There is no doubt, therefore, that the Bombay Land Revenue Code, 1879, was an existing law relating to land tenures in force in Bombay at the time when the Constitution (Fourth Amendment) Act, 1955, was passed and Article 31A in its amended form was introduced therein and the expression "estate" had a meaning given to it u/s 3 (5) there viz., "any interest in land" which comprised within its scope alienated as well as unalienated lands" and covered the holdings of occupants within the meaning thereof."

As we have pointed out the rights granted under the Ijara to the grantee were rights of exploitation of lands through tenants and of exacting rent, fees, taxes, etc. in consideration of an annual payment to be made by the grantee as and by way of assessment for the entire lands. It is clear from the deed of Ijara that the ex-ruler of Navanagar granted these rights instead of granting occupancy rights to tenants and charging assessment from them. In our view, there can be no doubt that these rights are in respect of land arising under the grant and constituting "estate" within the meaning of Article 31A(2). In view of this finding, the petitioner is barred from contending that the statute is unconstitutional or bad as being in violation of Articles 14 and 31.

16. It was, however, contended by Mr. Modi that the Act does not seek acquisition or extinguishment of rights but amounts to mere deprivation of the petitioner's rights in the lands. Now, there is a clear distinction between the two concepts of "deprivation" and "acquisition". By "deprivation" it is meant to take away or seize the rights of another person whereas by "acquisition" it is meant to acquire something from another person and to have it vested in you whether it is the ownership of the proprietary rights or other rights. The fact that the Act provides for compensation apart from the question whether such compensation is adequate or not clearly demonstrates that the abolition is not by way of deprivation but that it amounts to acquisition. As we have said the grant under the Ijara was during specified period viz., for 30 years upto the year 1960. The Act seeks to abolish these rights which otherwise would have remained in the Ijardar until the expiry of the Ijara. The Act thus seeks to extinguish his rights during the unexpired period of the Ijara. Looking to the preamble and the pith and substance of the Act, there is no doubt that it seeks to acquire for the State those rights from the Ijardar and, therefore, provides for compensation or at the most extinguishes those rights for the loss of which the Ijardar is to be paid compensation according to the manner and machinery provided in the Act. Deprivation on the Other hand would be by an act of State which does not ordinarily contemplate compensation.

17. Strong reliance was placed by Mr. Modi on a recent decision of the Supreme Court in *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, , where the Supreme Court had again to consider the import of the word "estate" as used in Article 31A(2). It is there observed that

"the definition of "estate" refers to an existing law relating to land tenures in a particular area indicating thereby that the Article is concerned only with the land tenure described as an "estate"

The inclusive definition of the rights of such an estate also enumerates the rights vested in the proprietor and his subordinate tenure-holders. The last clause in that definition viz., that those rights also include the rights and privileges in respect of land revenue, emphasizes the fact that the Article is concerned with land tenure. 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 varition subordinate tenure-holders in respect of their rights in relation to the estate."

It is no doubt true that since Article 31A protects the taking away of the fundamental rights as to property, this Court has to strictly consider that the interpretation of that article is not such as "to extend beyond its object. In case under consideration, therefore, the Court would have to consider whether rights which are sought to be taken away or extinguished fall within the scope of that article. In other words, the object for which such rights are sought to be taken away must have relation with the estate as defined in Article 31A(2). In the case under consideration by the Supreme Court, it was held that the property in question and the rights therein did not fall within the scope of that definition. But as held in this very decision, the definition refers to an existing law in the instant case, the Bombay Land Revenue Code as applied to Saurashtra which relates to land tenures. Now the rights which are, conferred upon the grantee under an *Ijara* are rights in relation to the tenure of the land in question and, therefore, they constitute "estate". There can. be no doubt that these rights are sought to be acquired or extinguished by the statute and whether it is one or the other, the object of the statute clearly is to remove intermediaries between the State and the tiller and abolish rights which permit them to exploit the lands without thus cultivating them personally but through the labour of those who cultivate them on certain payment either in cash or in kind. Apart from the question of the merits or demerits of such a measure, this is a measure dealing with lands, the object of which is to remove intermediaries between the State and the tiller. The decision of the Supreme Court in AIR 1960 S(J 1080, therefore, cannot assist Mr. Modi. Nor can that decision be said to have laid down anything different from the earlier decision reported in 61 Bom LR 811 : *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, .

18. It was conceded by Mr. Modi that if this case fell within Article 31A, the petitioner would be barred from contending that it was unconstitutional on "any of the grounds covered by Articles 14, 19 and 31. But then he argued that the

case fell under Article 31(1) and, therefore, the taking away of the Petitioner's rights must be established by the State as being consistent with the Article 19(5). Mr. Modi relied upon the observations, in Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, that,

"under Article 31(1) a person cannot be deprived of his property save by authority of law. The law must be a valid law. Under Article 13(2) a law depriving a person of his property cannot take away or abridge the right conferred by part III of the Constitution. Thus the law depriving a person of his property will be invalid if it infringes Article 19(1)(f) unless it imposes a reasonable restriction on the person's fundamental right. The State can establish that a law, though it purports to deprive a person of his fundamental right, under certain circumstances amounts to a reasonable restriction within the meaning of Article 19(5)".

But this contention assumes that what the Act seeks to do amounts to deprivation under Article 31(1) and not to acquisition or extinguishment of rights under Article 31A. As we have held what is sought to be done u/s 4 of the Act clearly amounts to acquisition or extinguishment of the rights of an Ijardar and not to mere deprivation. The Act deals with land tenures called "estate" within the meaning of the definition under Article 31A(2). Therefore, the contentions ground ed on Articles 14 and 31 are barred. Apart from that consideration we hold that the Act cannot be challenged on the ground that it is not supported by a public purpose or on the ground that it is discriminatory. It is also conceded in view of the several pronouncements of the Supreme Court that It cannot be challenged on the ground of adequacy or otherwise of compensation. It cannot also be held on a consideration of the provisions in the Act for compensation that the compensation provided therein is inadequate. On all these reasons the present statute in our view falls under Article 31A and, therefore, cannot be challenged on the grounds raised by the petitioner.

19. The petition therefore, falls and is dismissed. So far as the question of costs is concerned, the fair order would be that each party should bear his own costs. But in view of the importance of the questions raised in this petition, we think it necessary that fees should be taxed at Rs. 350/-.