

(1960) 01 CAL CK 0036
In the Calcutta High Court
Case No : C.R. No. 517 of 1958

Katras Jharia Coal Co. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-01-1960

Acts Referred:

Constitution of India, 1950 — Article 31, 31A, 31A(1)
West Bengal Estates Acquisition Act, 1953 — Section 2, 28, 29, 4, 5

Citation : AIR 1960 Cal 646 : 66 CWN 304

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : P.R. Das, R. Chaudhury, C.N. Laik and A.K. Mukherjee, for the Appellant; S.M. Bose, General, J. Mazumdar, Somendra Chandra Bose, S.K. Rai Chaudhury and P.K. Banerjee, for the Respondent

Judgement

Sinha, J.—The petitioner in this case is the Katras Jharia Coal Co. Ltd. a company incorporated under the Indian Companies Act. Mousas Seebpore and Koithi, Sub-registry Ranigunj, thana Ranigunj in the district of Burdwan, appertained to the zamindary of the Maharaja of Burdwan. In the year 1864-65 it was granted as a patni tenure to one Ram Krishna Chatterji by a patta. By the year 1895, after many devolutions, the interest came to be held by one Purno Chandra Daw. By an Indenture of Lease dated the 26th July, 1895 Purno Chandra Daw demised the lands and collieries mentioned in the said Indenture of Lease to the Katras Jharia Coal Co. Ltd., upon a permanent lease. The Indenture of Lease purports to demise to the petitioner company, the lands hereditaments and premises known as the "Seebpore and Koithi Collieries" together with all lands of every description and tenure, belonging to or held with, the Seebpore and Koithi Collieries, as also all mines beds and seams of coals and other mines and minerals whatsoever situated or lying in or under the said lands, and the other rights mentioned in the said Indenture of Lease. By an agreement dated 1st June, 1901 as modified by a further agreement dated 30th. March, 1955 the petitioner granted and demised by way of a sub-lease to the Seebpore Coal Co.

Ltd. a part and parcel of the coal mining rights in Mouza Koithi comprising an area of 986 bighas. So far as the surface lands of the said collieries are concerned, the petitioner company created a large number of under-tenures and Ryoti interests. As regards the colliery rights, the position is that the petitioner company has leased out by way of sublease, a part of the Koithi Colliery to the Seebpore Coal Co. Ltd., who have since 1901 been working the same. The rest of the collieries are being worked by the petitioner company itself. It seems that in 1908, certain litigations started and on or about 28th August, 1917 the petitioner company acquired a confirmatory lease from the Maharaja of Burdwan. The reason why such a confirmatory lease became necessary is briefly as follows: Prior to the year 1910, the question as to whether a lease of lands granted by a Zamindar carried with it the underground rights, that is to say, rights in mines and minerals underneath the surface, was a disputed question. In some leases, there was an express grant by the Zamindar of such rights, but in other cases the lessee claimed the under-ground rights by way of an implied grant. Upon this point there was a long stream of litigation culminating in the Privy Council decision, *Kumar Hari Narayan Singh v. Sriram Chakravarti* 37 IA 136 more commonly known as the "petana" case. It was held by the Judicial Committee that where a village was shown to be a mal village of the plaintiff's zamindary estate, he must be presumed to be the owner of the under-ground rights as well. Where he has granted a lease, and has not expressly parted with the under-ground rights, he must be taken to have retained the same. After the law was thus clarified, lessees founded their claims upon an express grant or else took a confirmatory lease from the Zamindar, granting them such rights. In this case, such a confirmatory lease was taken by the petitioner company, so that no question arises about the petitioner being a lessee with regard to the under-ground rights. The position therefore was that the Seebpore Coal Co, Ltd., the sub-lessee, paid rent to the Katras Jharia Coal Co. Ltd. and the Katras Jharia Coal Co. Ltd. the lessee, paid rent to the Maharaja of Burdwan, the Zamindar of the estate. The West Bengal Estates Acquisition Act, 1953 being West Bengal Act I of 1954 (hereinafter referred to as the "Act") came into operation on the 12th February, 1954. u/s 4 of the Act, upon a notification being issued by the State Government, all estates and the rights of every intermediary in each such estate, situated in any district or part of a district specified in the notification, vested in the State free from all incumbrances. Such a notification was issued in respect of the lands in question on the 15th April, 1955, Under the Act as originally promulgated, the word "intermediary" was defined as follows:

"Section 2(i) "Intermediary" means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant".

2. The word, "estate" or "tenure" has not been defined, but under Sub-section (p) of Section 3, expressions used in the Act and not otherwise defined, would have, in relation to areas where the Bengal Tenancy Act, 1885 applied, the same meaning as in that Act. That the interest of the Maharaja of Burdwan, which was a zamindary interest, came within the definition of the word, "intermediary", is

admitted. In other words, it is not disputed that the rights of the Zamindar, including his underground rights have passed to the State of West Bengal. The question that has been raised is as to the position of the lessee and the sub-lessee of mines and minerals. In other words, the question is as to whether the State has taken the property free from the rights of the lessee and sub-lessee, and if not, what are their present status in law. In order to ascertain this, it is necessary to consider a few more facts. On the 8th December, 1954 the Land Reforms Commissioner, Board of Revenue, West Bengal, wrote to Messrs. Andrew Yule and Co. Ltd. (Ex. "B" to the petition) to the effect that the West Bengal Estates Acquisition Act did not provide for the acquisition of the interests of lessee of a mine and that such a lessee was not an "intermediary" as defined in the said Act. The opinion was expressed that after the vesting of the rights of all intermediaries in the State, mining lessees will hold their leases directly under the State, and no return was required to be furnished by them under Rule 16 (1) of the Estates Acquisition Rules (Ext. "A" to the petition). On 11-4-1955 a communication was received from the Board of Revenue, by the Collector of Burdwan, being Order No. 4196 dated 11-4-55 to the effect that a lessee of mines was not an "intermediary" for the purpose of the Act and his status will not be altered even if he has granted any sub-lease for working mines, either in whole or in part. Such a lessee did not also become an intermediary by sub-letting any surface lands included in the mining lease. On 11-11-1955 a communication was received by the Additional Collector, Estate Acquisition, Burdwan from the Secretary, Board of Revenue, West Bengal (Ex. "C" to the petition) to the effect that u/s 29 of the Estates Acquisition Act, leases of mines and minerals granted by an intermediary and subsisting immediately before the date of vesting, shall with effect from such date, be deemed to have been granted by the State, on the same terms and conditions as in the subsisting lease, with certain additional conditions mentioned therein. Thus, lessees of mineral rights were to pay royalty and other dues to the State Government, irrespective of the fact whether they have let out any part of the property by way of a sublease. On or about 3rd March, 1956 the Additional District Magistrate, Burdwan, issued a memorandum, the relevant part whereof runs as follows :

"The question of payment of royalty by different mining interests has been raised before me from time to time. For the information of such interests I am giving below the correct position by citing an example.

A. An intermediary within the meaning of Section 2(1) of the Estates Acquisition Act

B. Lessee

C. Sub-lessee

D. Sub-lessee actually working the mines. Royalty payable by B to A will, from the date of vesting be payable to Government, Royalty by D to C and C to B will continue to be paid as before. This position will not in any way be affected if

either B or C owns any other interest in land as an intermediary as defined in the Estates Acquisition Act, (Ext. "D" to the petition)".

3. On the 23rd August, 1956 a memorandum was issued by the S.D.O. Asansole, Estate Acquisition Branch, addressed to the Indian Mining Federation, stating that all previous instructions were to be considered as superseded, because Government had decided that Section 29 of the Act clearly provided that the word "intermediary" includes a lessee or a sub-lessee and that, retention as under a lease, or a sub-lease, was permissible in law in the case of persons actually holding land and working the mines. Therefore, such parties were thenceforth to pay royalty dues according to the terms of the lease or sub-lease, as the case may be, direct to the Government. It is clear therefore that after the passing of the Act it was at first considered that the lessee should pay rent and royalty to the State Government, but that the sub-lessee would continue to pay his rents and royalties to the lessee, with which, the State Government will not be concerned,. By 1956, this view of Government came to be modified. A different construction came to be put upon the provisions of the Act, and briefly speaking, Government claimed the rents and royalties, not only from the lessee but also from the sub-lessee. Being conscious of the fact that such a stand might not be within the limits of the existing law, it was not long before the law itself was sought to be altered. On 16-1-1957 an Ordinance was passed, being the "West Bengal Ordinance No. 1 of 1957" altering the definition of the word, "intermediary" in. Section 2 of the said Act. This was followed by an amending Act, being West Bengal Act No. IV of 1957. The definition of the word, "intermediary", as amended, stands as follows:

"Section 2(1)--"intermediary" means a proprietor, tenure-holder, under-tenure-holder, or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder, and in relation to mines and minerals, includes a lessee and sub-lessee".

This definition was to be deemed as being contained in the Act from the very inception. There has been no consequential amendments effected in the body of the Act. After the issue of the Ordinance, the Subdivisional Land Reforms Officer, Asansole, demanded from all lessees and sub-lessees, the immediate payment of all arrears of rents and royalties, together with interest. So far as the lessees are concerned, the State Government does not propose to disturb their position so far as the collieries worked by them are concerned. Government however claims direct payment of the rents or royalties payable by the sub-lessees and the under-tenure-holders, direct and with retrospective effect. The difficulties confronting the, lessees are at once discernible. When the Act came into operation and the vesting took place on 15-4-1955 lessees and sub-lessees were not included within the definition of the word "intermediary". In their letters and departmental orders the Governmental authorities plainly took up the position that the lessees had become direct lessees under Government, but that the sub-leases were valid and Government had no concern with them. The sub-lessees

therefore, continued to pay their rents and royalties to the lessees, which by 1957 amounted to a substantial sum. On or about 16-1-1957 the law was suddenly changed. Lessees and sub-lessees were included within the definition of the word, "intermediary" and the amendment was made (retrospective. If the date of vesting of the interests of lessees and sub-lessees was to relate back to the notification u/s 4 already issued in 1955, then Government became entitled to receive the rent and royalties from the sub-lessees as from the date of the said notification. Therefore, the question arises as to how this would affect the rents and royalties already paid by sub-lessees to the lessees, and to whom they should make payment in future. In fact, this seems to be the real point in this case. As regards the under-tenure-holders of surface lands, no dispute has been canvassed before me. That being the position, it is necessary now to consider the position of lessees and sub-lessees of mineral rights under the Act. I have already referred to the "definition of the word "intermediary" in Section 2. The word, "incumbrance" has been defined in Sub-section (h) of Section 2 but it is a negative definition and not comprehensive. I have also referred to the vesting section namely, Section 4. The estate of an intermediary and all his right in each such estate, vested in the State on and from the date when the notification u/s 4 was issued in 1955. Section 5 of the Act lays down the effect of such a notification, the relevant part thereof runs as follows:

"5. Effect of notification. -- Upon the due publication of a notification u/s 4, on and from the date of vesting-

(a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all incumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely:

(i)" rights in sub-soil, including rights in mines and minerals,

4. The next thing to be considered are the provisions contained in Chapter IV of the Act, which is entitled "Mines and Minerals". This Chapter contains Sections 27 to 38. Section 27 lays down that the provision of Chapter IV shall have effect notwithstanding anything to the contrary contained elsewhere in the Act. The provisions of Sections 28 and 29 of the Act are of great importance.

5. The scheme of these two sections appears to be as follows: Where a mine was being actually worked by an intermediary on the date of vesting, then he would be deemed to be a lessee in respect of it, under the State Government. The terms and conditions were to be agreed upon between the parties, or in default settled by the Mines Tribunal. The provisions of Sections 28 and 29(i) are however very important. As will be pointed out in greater detail hereinafter, the subject of mines and minerals is a Central subject, and various statutes have been passed and rules promulgated by the Centre in respect thereof. Obviously, no mining operation could be carried on, except in accordance with the terms

and conditions imposed by such Acts, Rules and Regulations promulgated by the Centre. That is why the provisos have been introduced. While Section 28 dealt with the case of an intermediary, which in the context of the original definition of "intermediary" in the Act, plainly refers to the Zamindar, Section 29 dealt with leases in respect of mines and minerals granted by such an intermediary. In all such cases, the law contemplated that the parties actually working the collieries would not (be disturbed. Where there was a lease, but the lessee had done no prospecting or development work, he was given one year's time, as grace. If the prospecting or development work has been done in any part of the estate, then three years' time is granted as grace. Where the lessee does not engage himself in active mining operation within the period of grace, the lease is terminated and the land is resumed by Government after giving three months' notice. Under Sub-section (2) of Section 29, provision has been made for payment of compensation, where the lease is terminated and the land is resumed. Section 30 makes provisions for lands, buildings, machineries etc. relating to such mines. Where the lease continues, this may be held by the lessee upon the payment of a fair rent. Section 31 lays down the method of calculating compensation. Where there are mines and minerals on lands which have vested in Government, either developed or undeveloped, Sections 32 to 38 deal with the question of compensation in all its aspects. Therefore, even in the Act as it originally stood, the subject of mines and minerals was included. The estate of an intermediary, or his rights therein, so far as mines and minerals are concerned, would vest in the State but subject to the provisions of Chapter IV. Where the intermediary or his lessee was actually working the mines and minerals, the position is quite clear. They are to be allowed to continue as lessees under the State Government. Chapter IV makes no specific provisions for sub-lessees. The interpretation that is sought to be made is that under the original Act, sub-lessees were not dealt with in Chapter IV, and therefore, they continue to be sub-lessees under the lessees and the State has no concern with them. So far as the position, after the amendment is concerned, if the amendment is valid and governs the provision of Chapter IV, then the case of both the lessee and the sub-lessee had now suffered considerable alteration and both such interests vest in the State subject to the provisions of the Act. The first point of attack made by Mr. Das, appearing on behalf of the petitioner, is that the word "intermediary" as used in the body of the Act, cannot be taken to include a lessee or a sub-lessee, in spite of the fact that the definition of the word, "intermediary" has been now amended so as to include them. The way that he propounds his case is as follows: He says that the law on the subject is laid down by the provisions to be found in the body of the Act, and not by the definition section. When the Act was first promulgated, the definition of the word, "intermediary" did not include a lessee or a sublessee. The body of the Act was framed upon the basis of the definition as it originally stood. He points out that quite suddenly, and after a period of about three years from the date when the Act came into operation, the definition section was changed so as to include lessees and sub-lessees within the meaning of the word, "intermediary". Nevertheless, the body of the Act was

not amended, and no consequential changes were introduced therein. It is argued that the result is that no effect can be given to the altered definition, because it would make the body of the Act unworkable. He has cited several English authorities which I shall now proceed to consider. The first case is *Lindsay and Co v. Gundy* (1876) 1 QBD 348. In this case, Blackburn J., was speaking about the effect of an interpretation clause. In statutes 24 and 25 Vict. c 96, the term "property" was defined and included not only such properties as were originally in the possession or control of the party, but also any property into which the same may have been converted or exchanged, or anything acquired by such conversion or exchange. Blackburn J., stated that an interpretation clause -

"is a modern innovation and frequently does a great deal of harm because it gives a non-natural sense to words which are afterwards used in a natural sense, without noticing the distinction".

The learned Judge held that to give such a wide meaning to the word "property" would be to make a very great change in the law, with results which reached the border-line of absurdity. In other words, the learned Judge did not think that it was right, or possible, to interpret the word "property" in Section 100, as liberally as would be required if the interpretation clause was applied to it. The next case cited is a decision of the House of Lords, *George Robinson v. Barton Eccles Local Board* (1883) AC 798. Here also, the point that arose was about an interpretation clause. According to this clause, the word, "street" included any highway and any road, or lane whether a thoroughfare or not. The question was whether the word "street" meant something more than a road-way that is to say, a street with houses on both sides. Lord Selborne said that an interpretation clause of this kind was not meant to prevent words being used in their ordinary, popular or natural sense whenever that would be properly applicable.

6. In *ex parte Walton* (1881) 17 Ch. D 746 it was held by James L. J. that a statute may be construed contrary to its literal meaning, when a literal construction would result in an absurdity or inconsistency, and the words are susceptible of another construction which will carry out its manifest intention. When a statute lays down that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain, for what purpose and between what persons the statutory fiction is to be resorted to. In this case the learned Judge actually added something to the wording of the statute as it was necessary--"To prevent the most grievous injustice and the most revolting absurdity".

7. In *Jobbins v. Middlessex County Council* (1949) 1 KB 142 Scott L. J. held that Sub-section (3) of Section 40 of the Local Government Superannuation Act, 1937 was merely an interpretation sub-section and unless there was clear language having the opposite effect, and there was no such language, that sub-section should be construed as not cutting down the main provision of the operative part, of the Act. Mr. Das strongly relies on this case inasmuch as he has

attempted to establish that a literal application of the amended definition of the word "intermediary" would render the working of certain provisions in the body of the Act unworkable, and give rise to absurdities. He, therefore, invites me to ignore the amended definition as including lessees and sub-lessees, within the meaning of the word "intermediary". He also points out that inasmuch as there is a deeming provision, making the amendment retrospective in operation, there is an admission that originally the term, "intermediary" did not include lessees and sub-lessees. *Queen v. Commissioner of Inland Revenue* (1891) 60 LJ QB 376. These principles have been enumerated in *Craies on Statute Laws*, 5th Edn pages 197-200. The learned author points out that the practice of inserting an interpretation clause in a statute has met with judicial censure. In *Wakefield Board of Health v. West Riding Railway* (1866) 6 BS 794 Cockburn C. J. said "I hope the time will come when we shall see no more of interpretation clauses, for they frequently lead to confusion". In *Mayor of Portsmouth v. Smith* (1885) AC 364 Lord Blackburn supported the objection of the old school of draftsmen to the introduction of an interpretation clause. Interpretation clauses frequently fall under severe judicial criticism from failure to observe the valuable rule never to enact under the guise of definition, which is their chief defect. In *R. v. Commissioners under the Boilers Explosion Act 1882* 1 Q B 703 Lord Esher M.R. said--"This is a peculiar bad specimen of the method of drafting, which enacts that a word shall mean something which in fact it does not mean". And the same learned Judge said in *Bradley v. Baylis* (1881) 8 QBD 195-

"it seems to me that nothing could be more difficult, nothing more involved, than this statute, and that the difficulty arises from the fact of Parliament insisting upon saying that things are what they are not".

In *Dean of Ely v. Bliss* (1852) 2 DMG 459: Lord St. Leonards said:

"it has been very much doubted, and I concur in that doubt, whether these interpretation clauses which are of modern origin have not introduced more mistakes than they have avoided, for they have attempted to put a general construction on words which do not admit of such a construction in the different senses in which they are introduced in the various clauses and Acts of Parliament".

Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of a term must be under all circumstances but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that if that word is used more than once in the Act, it is on each occasion used within the extended meaning, and it may be always a matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act, which is under consideration. See *R. v. Cambridge Shire JJ.* (1838) 7 AE 480; The question is

whether these principles are applicable to the facts of this present case and to what extent. Mr. Das has drawn my particular attention to the fact that Section 2, the defining section, is prefaced by the words, "unless there is anything repugnant in the subject or context"". In short, the argument is that the word "intermediary" was previously defined so as not to include "lessees" and "sub-lessees". The body of the Act, and in particular Section 5 and Sections 27 to 38 contained in Chapter IV of the Act, were drawn up on the basis of this definition. By the amending Act, simply the definition clause was extended so as to include "lessees"" and "sub-lessees" within the term, "intermediary". This was done without making any alteration and consequential amendments in the body of the Act. Mr. Das argues that if we read the expression "intermediary" in these sections in Chapter IV, as including lessees and sub-lessees, then the most absurd situations will arise. From this, he argues that here is an attempt to legislate through a definition clause, which is not permissible. According to Mr. Das the body of the Act is not affected in any way by the amendment and remains as before. I must now set out the inconsistencies and absurdities which Mr. Das claims, would arise if the amended definition is given effect to.

8. The scheme of the Act is that the State Government issues a notification u/s 4(1) declaring that from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate, situated in any district or part of a district specified in the notification, shall vest in the State free from all incumbrances. Under subsection (2), the date mentioned must be the commencement of an agricultural year. Under subsection (3) the notification is to be published in the first instance in at least two issues of each of two newspapers (one of which must be in the Bengali language) circulating in West Bengal and also by affixing at each police-station and sub-registry office within the district or part of the district specified in the notification and by beat of drums and in any other manner as may be prescribed. Under Subsection (4), after such publication, the notification has to be issued in the Official Gazette. Under Subsection (6) an intermediary may at any time before 15-2-1955 apply to the State Government to have all his estates, tenures, undertenures and other rights, vested in the State and the Government may order such vesting. u/s 5A, an enquiry may be made into any transfer by an intermediary made between the 5th day of May, 1953 and the date of vesting, and if the transfer is not bona fide, it may be cancelled after an enquiry is made in accordance with the provisions of Sub-section (5) of Section 5A, Under Sub-section (6) of Section 5A an appeal lies against such an order. u/s 6, notwithstanding anything contained in Sections 4 and 5, an intermediary is entitled to retain certain lands and other interests mentioned therein. For example, he is entitled to retain lands comprised in homesteads, or non-agricultural lands in his khas possession, not exceeding 15 acres, or agricultural land in his khas possession not exceeding 25 acres. The way that this retention is done is that in the declaration made in the prescribed form, an intermediary claims the quantity of lands etc. that he claims to retain, and, the Estates Acquisition Authorities determine whether it falls within the

prescribed limits, and the notice of possession is issued by the Collector after the determination of such rights. Also, the record-of-rights is drawn up accordingly. Mr. Das argues that under the original provisions of the Act, the interests of lessees and sub-lessees did not vest in Government, and consequently, in respect of such interests, no notification u/s 4 had ever been issued. It is admitted that after the amendment no fresh notification u/s 4 has been issued. That being the position, it is argued that in the absence of a notification u/s 4, such interests have not vested at all. Assuming however that the notification already issued was sufficient, then it is extremely unjust, because upto the date of the amendment everybody knew that leases and sub-leases were not included within the mischief of the Act and no effort was made, and indeed could not have been made, to bring home to the lessees and sub-lessees that their interests also had vested in Government. In other words, Mr. Das argues that the idea of issuing and the publication of a notification was to inform the particular intermediary concerned, that he had lost his proprietary right in the estate, leaving him to take steps to retain such portions thereof as the law permitted. Not only has this notification to be issued but the law prescribes various precautions to get the information conveyed to the parties concerned. As I have stated above, there has to be publication in the Official Gazette, newspapers, police station etc. Mr. Das argues that the issue of this notification and the publication thereof are essential ingredients of the operation of vesting. He asks me to visualise what has happened to lessees and sublessees as a result of this amendment. In 1954, when the Act was passed, or in 1955 when the vesting took place, everybody knew that lessees and sublessees were not included within the word "intermediary". Government Officials indicated in their official communications that such was the case. Consequently, lessees and sub-lessees continued their existence as before, excepting that the Zamindar was replaced by the State Government. Sub-lessees continued as before to pay their rents and royalties to the lessee. In this particular case, large sums have been paid and/or received by the petitioner from their sub-lessees. Now suddenly, in 1957 it is said that the estates of lessees and sub-lessees and/or their rights in such estates had vested in Government from 1955. The result is that all payments in the interval would become unauthorised and the sublessees would have to pay over again to Government. Mr. Das argues that it can never be said that in the case of these unfortunate persons, the Act contemplated that no notification should be issued. He says that it is absurd to consider the original notification as being the necessary notification u/s 4 so far as lessees and sub-lessees are concerned. When it was published in 1955, nobody considered it as a notification affecting lessees and sub-lessees of mines or minerals except as provided in Chapter IV of the Act. They could not be expected to anticipate that three years after the issue of the notification, it would be made applicable to them with retrospective effect. In other words, he says that you can amend the definition but you cannot make a notification retrospective, because that notification is a condition precedent for vesting and can only notify a fact which existed at the time when the notice was, in fact, issued. Mr. Das then comes to

the provisions of Chapter IV of the Act which deals with mines and minerals. He points out that Section 28 deals with the rights of intermediaries directly working mines, whereas Section 29 deals with leases of mines and minerals granted by an intermediary. He says that in the original Act, the intention was quite clear. The intermediary was the Zamindar. Section 28 conferred on a Zamindar who was actually working a mine, the right to retain it as a lessee under Government. Section 29 dealt with leases granted by the Zamindar. Such lessees, if they, in their turn were actually working a mine, became lessees directly under the Government. If we now attempt to interpret the word "intermediary" so as to include not only a Zamindar but also lessees and sub-lessees under him, then not only the sequence of the sections in the Act is disturbed but the provisions in Sections 28 and 29 become conflicting. Section 28 would then mean that not only Zamindars but also lessees and sub-lessees working mines would become direct lessees under the Government. Section 29 again would mean that all leases of mines and minerals granted by, not only a Zamindar, but a Zamindar, lessee or sub-lessee would be affected by its provisions, and they would become lessees under Government on terms and conditions mentioned therein. This is claimed to be inconsistent with the provisions of Section 28, which has already provided for the same, but in a slightly different manner. In Section 28 the intermediary actually working a mine would hold as a lessee on terms and conditions as shall be agreed upon between him and the State Government or as may be settled by the Mines Tribunal. u/s 29, the very same set of persons, in the very same circumstances, would hold a lease upon the same terms and conditions as of the subsisting lease, but with additional condition mentioned therein. Mr. Das argues that it is plain that if you read the amended definition into these two sections there is inconsistency, overlapping and absurdity. The solution, according to him, is not to read the amended definition into the provisions of these two sections, but to interpret them according to the old definition. He says that it was not the intention of the legislature to affect these two sections and such a presumption should be drawn on the strength of the principles enunciated in the English decisions mentioned above, which have clearly laid down that you cannot legislate on the strength of a definition clause. Mr. Das also draws my attention to the following aspects: Section 29(1)(i) deals with the case where the holder of a lease had not done any prospecting or development work before the date of vesting. In such a case he is allowed one year's time from the date of vesting to begin prospecting or development work and if he fails to do so, the lease may be resumed. There is similar provision in Clause (ii) where the period of grace is three years from the date of vesting. Let us now contemplate the case of a sub-lessee who has not done any prospecting or development work. If the date of vesting is 1955 then the period of grace granted under clause (i) has long ago expired. He has therefore, no rights at all under that clause in 1957, when by the amendment his interest is sought to be affected. The position is the same with regard to Clause (ii). I do not say that such is the position in the present case. Mr. Das however argues that in order to test the legality of an enactment you must consider all possible cases and not the

facts of a particular case. Next he points out that u/s 5A the State may avoid transfers made between 5-5-1953 and the date of vesting. u/s 5B, on and from the 1st day of June, 1954 there is a provision prohibiting certain sales. Since upto 1957 everybody knew that the interests of lessees and sub-lessees had not vested in the State, they were at liberty to enter into transactions of mortgage or sale or the creation of incumbrances in favour of third parties. Mr. Das assures me that within this interval, a large number of such transactions have in fact taken place. If the amendment is given effect to, then all these transactions are affected. Third parties in whose favour incumbrances have been created or sales affected are at once hit. The Act makes no attempt to grant compensation to such persons. Mr. Das argues that it could not have been the intention of the legislature to affect such vested interests without expressly saying so in the body of the Act. Mr. Das points out that the time fixed for the payment of compensation u/s 12 has passed long ago and if it was intended to include lessees and sub-lessees in the term, "intermediary", specific provisions would have been made for fixing the date of payment of compensation to them. Mr. Das approaches the question from another point of view. He points out that the definition section is prefaced with the expression "unless there is anything repugnant in the subject or context". Therefore, it is not as if you are compelled to apply the definition as propounded, into every section contained in the body of the Act. If in the process of such application you come across any repugnancy then in that event it is the provision in the body of the Act that must prevail. Indeed, even if such qualifying words did not exist, they would have to be implied. The words used in a statute must take their colour from the context, and need not have the same meaning in every section. *Knightsbridge Estate Trust Ltd. v. Byrne* (1940) AC 613, *Kartick Chandra Mallik and Another Vs. Rani Harsha Mukhi Dasi, Executrix to estate of Raja Manindra Chandra Sinha*, . Mr. Das says that the inconsistencies and absurdities that he has already pointed out, indicate that if you apply the amended definition into the body of the Act, then there is repugnancy. Consequently, you must avoid such application. In other words, he says that in 1954 when the Act was first promulgated, it was contemplated that the estate and the rights in an estate of an intermediary would vest in the State, but not the estate of a lessee or sub-lessee. A lessee became a lessee directly under the State, but the sub-lessee was entirely unaffected. In 1957, the definition was amended and was deemed to have come into effect from the commencement of the Act. Nothing was done in the body of statute. It was not stated that u/s 4 of the Act, the interests of lessees and sub-lessees should be deemed to have vested from the date of the original notification. Therefore, we should not read into Section 4 any such change, which is not only unjust, but affects vested interests including the interests of innocent third parties, unless we are compelled to do so. According to Mr. Das, all that the legislature intended was that lessees and sub-lessees should be brought into the picture, but without doing violence to the provisions contained in the body of the Act. Where they can be fitted in without doing violence to the provisions already contained in the body of the Act, then it could be done but not otherwise. According to learned counsel,

the introduction of lessees and sub-lessees into the provisions of Chapter IV would be doing violence to its provisions.

9. This has been the main argument of Mr. Das in this case, but he has made a number of other points to support his case. The first point is a constitutional point. The way that he propounds it is as follows: Article 31(2) of the Constitution lays down that no property shall be compulsorily acquired save for a public purpose and save by authority of a law which provides for compensation or lays down the principles for calculating such compensation. This provision in the Constitution has been the subject-matter of progressive amendments. When the State began to take over Zamindaries, various objections were raised as to the constitutional defects in statutes passed for that purpose, including the plea that there was want of public purpose and/or that the compensation was inadequate. The leading case on this subject is *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, (hereinafter referred to as the "Darbhanga case"). The courts had held that the compensation that was to be awarded should be just compensation, and that the matter was justiciable. The result was that the Constitution was amended. Firstly, it was laid down in Article 31 that no such law shall be called in question in any Court on the ground that the compensation provided by the law was not adequate. This was done by the Constitution (4th Amendment) Act, 1955. Then, we have Article 31A in which, Clause 1 has now been substituted by the 4th Amendment Act, 1955. As it now stands, it is a further whittling down of the rights conferred by Article 31(2). Under this constitutional provision, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of such right thereunder or the extinguishment or the modification of any right accruing by virtue of any agreement, lease or license for the purposes of searching for, or winning any mineral, or the premature termination or cancellation of any such agreement, leases or licenses 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 articles 14, 19 or 31. In this background I have to consider the following arguments advanced by Mr. Das:

1. That the interests of a lessee and a sublessee of mining rights, or at least the interest of a sub-lessee, which is sought to be acquired, is a mere right to receive a certain sum of money. The acquisition of such a right is not a "public purpose" and would thus violate the provisions of Article 31(2) of the Constitution.

2. The provisions of Article 31A of the Constitution do not apply because of the following reasons:

(i) A lessee or a sub-lessee of a mining interest does not hold an "estate" within the meaning of that expression as used in Clause (1) of Article 31A and as explained in Clause 2 thereof.

A lessee or a sub-lessee is not an "intermediary" within the meaning of Sub-

clause (b) of Clause 2 of. Article 31A.

(ii) Acquisition by the State of the interests of a lessee or a sub-lessee of a mining right is not contemplated by Article 31A, because there is a specific provision in respect of mineral rights, namely Sub-clause (e) of Clause 1 of Article 31A which speaks of the "extinguishment" or "modification" of such a right, but not of its "acquisition".

(iii) to come within the definition of the word "estate" as used in Article 31A, it must be an agrarian interest or right, and an interest in working a colliery by way of a lease or sub-lease is not an agrarian right, nor is it a tenure or an under-tenure.

(iv) The object of the West Bengal Estates Acquisition Act, as indeed the object of all such Acts, is to introduce agrarian reforms and by abolishing the zamindars and other middlemen, to bring the State, face to face with the tillers of the soil. The acquisition of mining rights is foreign to the purpose of such a statute. The word "estate" means agricultural or horticultural lands and does not include mines and minerals. A mining right is an incorporeal right whereas the right in an "estate" is a corporeal right.

3. That the provisions contained in Chapter IV of the Act read with Section 5A(1) are ultra vires inasmuch as they contain restrictions on the subject of mines and minerals, which is a Central subject, and is thus an exclusive subject matter of legislation by Parliament. The State Legislature is, therefore, not competent to pass a law affecting such matters and the provisions of Chapter IV and particularly of Sections 28 and 29 are void because such provisions infringe the rights of Parliament and are inconsistent with statutes, rules, regulations and orders passed by the Central Government on the subject of mining and minerals.

4. Assuming that Article 31(2) applies, the acquisition of interests of the lessee or the sub-lessee is bad, because no compensation is provided in respect of such acquisition. At least there is no compensation provided for the acquisition of the rights of the sub-lessee.

10. With regard to the first point, Mr. Das argues that Government is attempting to acquire by the amendment, nothing but a claim to a payment of money. He says that this is apparent from a petition filed by the State of West Bengal in Civil Rule No. 1252 of 1957 dated 29-7-1957 which is printed at page 58 of the Paper Book in Appeal No. 397 of 1958, which Paper Book has been filed before me and I direct that it should be made an exhibit. What happened there was as follows: The Indian Mining Federation and several, other collieries made an application before me and a Rule was issued, more or less agitating similar points. That is Civil Rule No. 1252 of 1957. On 3-5-1957 I issued the Rule and granted an interim order restraining the respondent in that case from realising rents and royalties upon an undertaking given by the petitioners in that application, not to dispose of their immovable properties pending disposal of the Rule, and upon their undertaking to indemnify the respondent for any damages that may be

caused by the said interim, order. On the 29th July, 1957 an application was made by the respondent in that Rule to have the interim order vacated, on the allegation that more than 26 lakhs of rupees have become due to Government as rent and royalties and that many colliery owners are ready to pay the dues of the State which it cannot accept because of the said interim order. It was stated that the said sum was very heavy and there will be serious loss of revenue resulting in stoppage of many grants and development work. Mr. Das argues that it is clear from this stand taken by Government that all it wants is payment of a sum of money. He further argues that in any event, the amount that is payable by the sub-lessee to the lessee who has parted with possession, is merely a right to the payment of a sum of money, and this cannot be acquired. Mr. Das has cited Cooley's Constitutional Limitation Vol.2 8th Edn. page 1118. Speaking about the right at "Eminent Domain" vested in the State, the learned author says that money, or that which in ordinary use passes as such, and which the Government may raise by taxation, cannot be the subject matter of acquisition by the exercise of the right of Eminent Domain. It was held in *Kaysville v. Elison*, 43 LAA 81 that taking money under the right of Eminent Domain, when it must be compensated in money afterwards, was nothing but a forced loan. It would Only be justified as a last resort in time of extreme peril, where neither the credit of the Government nor power of taxation could be made available. Willis, in his treatise on "Constitutional Law" page 816 says that property is in general subject to the exercise of the power of Eminent Domain but not money. In the *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, it was held that the Bihar Land Reforms Act did have a public purpose. The concentration of big blocks of land in the hands of a few individuals was contrary to the principles on which the Constitution of India is based. The purpose behind the Bihar Act was to bring about a reform in the land-distribution system of Bihar for the general benefit of the community. The Legislature was the best judge of what was good for the community. These observations however did not apply to the acquisition of arrears of rent. On the facts of the case, it was found that 50 per cent of such acquisition was meant for supplementing the revenues of the State or for securing means for payment of compensation to the Zamindars. Mahajan, J. said as follows:

"The learned Attorney General contended that the acquisition of arrears was an acquisition of choses in action and that the compensation paid for it was 50 per cent of the amount of arrears. I regret I am unable to accept this suggestion. It is a well-accepted proposition of law that property of individuals cannot be appropriated by the State under the power of compulsory acquisition for the mere purpose of adding to the revenues of the State".

11. I now come to the second point made by Mr. Das mentioned above. Mr. Das points out that we are dealing here with the West Bengal Estates Acquisition Act. The object of the Act is to provide for the State acquisition of estates, of rights of intermediaries therein, and of certain rights of raiyats and: under-raiyats. The word, "estate" has not been defined in the Act. Sub-section (p) of Section 2

however, lays down that the expressions used in the" Act but not otherwise defined, in relation to the-aieas to which the Bengal Tenancy Act applies bear the same meaning as in that Act. The word, "estate" has been defined in Sub-section (4) of Section 3 of the Bengal Tenancy Act as follows:

"Estate means land included under one entry in any of the general register of revenue paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a District, and includes Government Khas mohals and revenue-free lands not entered in any register".

12. Mr. Das argues that the word, "land" here: means agricultural or horticultural land, and cannot include mining rights. In other words, it is a corporeal right in respect of surface land. A mining right, that is to say, the right to excavate minerals out of mines is an incorporeal right. Mr. Das refers to the "petana" case 37 IA 136 where the question was whether, when a Zamindar created a tenure of land, he also must be taken to have granted the under-ground rights. The High Court decided in the affirmative. The Privy Council set aside the decision. Lord Collins said as follows;

"No decided case was cited in support of the view of the High Court, which seems practically to ignore the distinction between the mere tenure-holder and the Zamindar, and the law as laid down in, the passage cited from Mitra's "Land Law of Bengal" does not appear quite in accord with the view of, Mr. Field in his admirable introduction to the Bengal Regulations page 36, where he says, "the zamindars can grant leases either for a term or in perpetuity. He is entitled to rent for all lands lying within the limits of his zamindary, and the rights of mining, fishing, and other incorporeal rights are included in his proprietorship"". It would seem, therefore, that Mr. Field did not regard his letting the occupancy right as presumptive evidence of his having parted, with his property in the minerals".

12a. In *Thakur Girdhari Singh v. Meghlal Pandey* 44 IA 246: (AIR 1917 PC 163) a corporeal right has been explained as a right to the corpus which does not disappear by user. Therefore, rights in mines and minerals cannot be a corporeal right. In *Ranigunj Coal Association Ltd. v. Judoonath Ghosh* ILR 19 Cal 489 it was held that a registered lease granted for a building purpose and for establishing a coal depot does not come within the purview of the Bengal Tenancy Act, not being a lease for agricultural or horticultural purpose. Such a lease could not be described as a "tenure".

13. The next case cited is *Umrao Bibi v. Mohammed Rojabi* ILR 27 Cal 205. In that case, the plaintiff was an ijaradar of a certain plot of land within the Dacca Municipality. The action was one for rent. The question was whether the limitation prescribed by the Bengal Tenancy Act was applicable. Maclean C. J. held that it did not, because it applied to tenure-holders and a tenure holder within the contemplation of the Act must be a person who holds land which is used for agricultural or horticultural purposes.

14. The learned Judge points out that there must be some difference between the Bengal Tenancy Act and the Transfer of Property Act, and the difference lies in the fact of the land being agricultural or non-agricultural. It was held that as the land in dispute was not shown to be used for agricultural or horticultural purposes, the Bengal Tenancy Act had no application. In *Munshi Alauddin Ahammed Choudhury and Others Vs. Tomizuddin Ahammed*, it was held that the Bengal Tenancy Act applied only to a lease for an agricultural purpose, and not even to a lease which is a lease of agricultural lands. In *Abdul Hossain Vs. Salimar Paint, Colour and Varnish Co. Ltd.*, the plaintiff company acquired by purchase an occupancy right in small parcels of land from raiyots. Then it took a mukurari mourasi lease from the superior landlord, with the object of having a factory site. Under the lease, however, it could use the land for any purpose it liked. A part of the land was let out for cultivating paddy. Held that the plaintiff company was a tenure-holder and was subject to the provisions of the Bengal Tenancy Act. Next, Mr. Das argues that the word "intermediary" as used in Article 31A could only refer to the holder of an interest in land, midway between the State and the actual tiller of the soil. He argues that the estate or the rights in an estate of an intermediary cannot include a mining interest or interest in minerals. He has first of all referred to the *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, where Sastri, C.J., said as follows:

"The common aim of this statute referring to the Zamindari Abolition and Land Reforms Acts generally speaking, is to abolish zamindaries and other proprietary estates and tenures in the three States aforesaid so as to eliminate the intermediaries by means of compulsory acquisition of their rights and interests, and to bring the raiyots and other occupants of lands in those areas into direct relation with the Government".

15. In *The State of Bihar Vs. Sir Kameshwar Singh*, Mahajan, J., says as follows :

"Main purpose of the Act is to bring the actual tillers of the soil in direct contact with the State by the elimination of intermediary holders. In short the Act aims at converting malguzari into ryotwari land system. It also aims at giving to the Gram Panchayat the management of common lands freed from the grip of the proprietors".

16. In *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, Mukherjea, J., said as follows:

"The Act, (Orissa Estates Abolition Act, 1952) so far as its main features are concerned follows the pattern of similar statutes passed by the Bihar, Uttar Pradesh and Madhya Pradesh Legislative Assemblies. The primary purpose of the Act is to abolish all zamindari and other proprietary estates and interests in the State of Orissa and after eliminating all the intermediaries to bring the raiyots and the actual occupants of the land in direct contact with the State Government".

17. In *Thakur Amar Singhji Vs. State of Rajasthan*, Ayyar J., held that the object

ot Article 31A was to save legislation which was directed to the abolition of intermediaries so as to establish direct relationship between the State and the tillers of the soil.

18. In *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, it was held that the object of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956 was to do away with intermediaries and to establish direct relationship between the State and the tillers of the soil.

19. In *Atma Ram Vs. The State of Punjab and Others*, Sinha J. (as he then was) states as follows, regarding the meaning of the words "any estate or of any rights therein" as used in Article 31A(1)(a):

"On the other hand, as indicated above, they have used the expression "estate" in an all-inclusive sense. They have not stopped at that; they have also added the words "or any rights therein". The expression "rights" is relation to an estate again has been used in a very comprehensive sense including not only the interest of proprietors or sub-proprietors but also of lower grade tenants, like "raiya" or "under raiya", and then they added, by way of further emphasising their intention the expression "other intermediary", thus clearly showing that the enumeration of intermediaries was only illustrative and not exhaustive. If the makers of the Constitution have, thus shown their intention of saving all laws of agrarian reform, dealing with the rights of intermediaries, whatever their denomination may be, in our opinion, no good reasons have been adduced in spite of the view that portions or shares in an estate are not within the sweep of the expression "or any rights therein""

20. Because of these reasons Mr. Das argues that the West Bengal Estates Acquisition Act was intended only to abolish the estate of the intermediate owners between the State and the tillers of the soil. It is a measure of agrarian reform, and has nothing to do with incorporeal rights like rights in mines and minerals and does not deal at all with a lessee or sub-lessee of mines and minerals. Next, he says that in Article 31A, Sub-clause (a) of Clause (1) speaks of the acquisition by the State of any estate or of any rights therein or the extinguishment or .. modification of any such rights. The subject matter of minerals or agreements in respect thereof by way of lease or license is dealt with in Sub-clause (e) of Clause (1) and in this sub-clause the word "acquisition" is dropped and what is dealt with is "extinguishment" or "modification" of such rights. Mr. Das argues that this distinction was deliberately made. Assuming therefore, that Article 31A deals with the subject matter of lease or license in respect of mines and minerals, then all that is saved is any law for the extinguishment or modification of such a right but not the acquisition thereof. We now come to the third point mentioned above, namely, that the provisions contained in Chapter IV of the Act read with Section 5A(1) are ultra vires inasmuch as they contain restriction on the subject of mines and minerals, which is a Central subject exclusively. It is argued that the State Legislature was not competent to pass an Act affecting such a subject, because it would clash with

Central Acts, Rules and Regulations. On this point Mr. Choudhury, following Mr. Das, placed before me a long series of Central Acts, Rules and Regulations, in an attempt to show that the provisions in Sections 28 and 29 of the West Bengal Act were in conflict with the Central Acts, Rules and Regulations. That the subject of mines and minerals is a Central subject is not disputed. I think that for the purposes of this application it is not necessary for me to go in detail into all these Acts, Rules and Regulations. Roughly speaking, the argument is as follows: Under these Acts and Rules, the more prominent amongst them being (i) Mines and Minerals (Regulations and Development) Act, 1948, (ii) Mineral Concession Rules 1949 (iii) Mining Leases (Modification of Terms) Rules 1956 and (iv) Minerals Conservation and Development Rules 1958-- , it is provided that leases for mining purposes including sub-leases are to be effected under the control of the Central Government, in favour of approved persons and on terms approved or as laid down by the Central Government. It is argued that Sections 28 and 29 contain provisions contrary to the provisions contained in the Central Legislation. For example, it is stated in Section 28 of the Act that if the Zamindar was actually carrying on mining operations, he would become a lessee under the State Government on such terms and conditions as may be agreed upon between them or in default, as settled by the Mines Tribunals. It is argued that the Zamindar concerned may not be an approved person in whose favour a license has been granted by the Central Government as is required under the Central Rules and the conditions agreed upon or settled by the Mines Tribunal may not be in consonance with the Central Rules. It is argued that the Central Rules recognise a sub-lessee, whereas, in Chapter IV of the Local Act a sublessee is ignored.

I shall now consider the answers to the points raised above, as given by the learned Advocate General. He starts by pointing out that the amendment of the definition of the word "intermediary" in the Act has been expressly made retrospective. That is to say, the definition as amended is to be read into the Act from the date when it originally came into force. He says that the authorities cited to the effect that you cannot legislate by a definition section have no application to the facts of this case, because if logical effect is given to the retrospective operation of the amendment, there is no inconsistency or absurdity in the body of the Act. In order to establish this point it is necessary to consider the legal effect of such retrospective operation. The first case cited is a Full Bench decision of the Bombay High Court, *Prabhakar Kondaji v. Emperor* AIR 1944 Bom 119. The applicant was detained under Rule 26 of the Defence of India Rules. The Federal Court held that the detention order was bad because Rule 26 of the Defence of India Rules was invalid, being in excess of the powers conferred by a Rule made or deemed to have been made u/s 2 of the Defence of India Act, 1939. Thereupon, an Ordinance was passed by the Governor General whereby Section 2 was amended and it was provided that for Clause (x) of Sub-section (2) of Section 2 of the Defence of India Act, 1939 a certain clause shall be substituted and shall be deemed always to have been substituted. This,

Ordinance was challenged. It was held by Beaumont C. J. that the meaning of these words was that the new clause was substituted in the place of the old clause from the date of its inception. In other words, the said substituted clause must be read as being contained in the Defence of India Act from its very inception. In the *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, Mahajan J., was considering the effect of a "deeming clause". He said as follows:

"When a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons a statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion (vide Lord Justice James in (1881) 17 Ch. D 746. In *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1952) AC 109 Lord Asquith while dealing with the provision of the Town and County Planning Act, 1947 made a reference to the same principles and observed as follows:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as-real the consequence and incidence which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it the statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

21. The next case cited is *The Union of India Vs. Madan Gopal Kabra*, . The facts in that case were as follows: The respondent resided and carried on business in the district of Jodhpore in Rajasthan. The Rajputana States, including Jodhpore, integrated their territories into the United States of Rajasthan, which acceded to the Dominion of India by an Instrument of Accession dated 15-4-1949. Under that Instrument, the Dominion Legislature had no power to make any law imposing any tax or duty in the territories of the United States of Rajasthan, Under the Constitution, all Part B States including Rajasthan were brought into the Union. Parliament came to have exclusive powers under the Constitution to make laws with respect to tax on income other than agricultural income. Parliament enacted the Finance Act, 1950 which provided for the imposition of Income Tax for the year beginning 1-4-1950. Section 3 of the Finance Act made certain amendments in the Indian Income Tax Act, with effect from that date. The most important amendment is the substitution of the present Clause (14A) in Section 2 in place of the old clause. By this amendment, "taxable territories"" were defined to mean the whole of the territory of India excluding Jammu and Kashmir, as respects "any period". The scheme of the Indian Income Tax Act is to tax a person resident in the taxable territories during the previous year on all his income in that year, whether accruing within or without the taxable territory. If a person is not a resident in the taxable territory, he can only be taxed upon his income accruing within the taxable territory. It was argued that the assessee

here was residing in a territory which during the year 1949-50 had no law providing for payment of Income Tax, and since the amendment took effect from April, 1950 the income of the previous year could not be made taxable. This argument found favour with the High Court, but was rejected by the Supreme Court. It was held that regard being had to the definition of the words "taxable territories" as given above, Rajasthan was included even during the years 1949-50, because the words used in the amendment were "any period". In 1949-50 the assessee was living in a territory where there was no law calling upon him to pay Income Tax. In 1950, a retrospective law was passed and he was made liable to pay Income Tax for 1949-50. This indeed was a case of considerable hardship. The assessee being comforted with the view that he had to pay no Income Tax, might not have made any preparation for its payment. Nevertheless, he was made to pay Income Tax by a retrospective legislation. The learned Advocate General argues that inasmuch as the Legislature is supreme in its own field, it could pass retroactive legislation and no amount of hardship can invalidate it. He argues that in the present case also, the Legislature had not in the first instance included lessees and sub-lessees of mines and minerals within the scope of acquisition. Such persons were, therefore, entitled to think that their rights remained intact and they proceeded to act in accordance with the terms of the lease and sub-lease. Now by amendment they have been included with retrospective effect. He argues that this undoubtedly causes hardship, because all the interim transactions become invalidated. But the Legislature has power to effect this and" such a law cannot be declared to be bad by the Court on the ground of hardship. The next case to be considered is *Chatturam Horilram Ltd. Vs. Commissioner of Income Tax, Bihar and Orissa*, . In the year 1939-40 the appellant had been assessed to Income Tax. That assessment was set aside on the ground that the appellant company carried on business in Chotanagpur, where the Indian Finance Act, 1939, was not in force. Upon that, the Governor of Bihar promulgated the Bihar Regulation IV of 1942 which came into effect on 30-6-1942. The relevant portion (it the Regulation was in the following terms:

"The Indian Finance Act, 1939, shall be deemed to have come into force in the area to which this Regulation extends on 30-3-1939".

22. On 8-2-1944 a notice was issued u/s 34 of the Income Tax Act reopening the assessment for the year 1939-40. The question was whether this was justified. Jagannadhadas J. held as follows;

"... though as a fact, on account of the Finance Act not having been extended to the relevant area during the year 1939-40, legal authority was then lacking for the quantification of the tax and the imposition of the liability therefor, the income of the assessee for the relevant year was nonetheless chargeable to tax at the time in the sense explained above. Indeed it can also be said that the very fact of Regulation IV of 1942, having brought the Finance Act. 1939 into operation retrospectively, in this area, has factually brought about in any case, the chargeability of the tax during that very year. The relevant portion of the

Regulation is that "the Indian Finance Act, 1939 shall be deemed to have come into force in the area to which this Regulation extends on 30-3-1939." By virtue of this deeming provision, the Indian Finance Act, 1939 must be assumed even factually to have come into operation on the dates specified and the tax must be taken to have become chargeable in that very year, though; the actual liability for payment could not arrive until proper and valid steps are taken for the quantification of the tax. The contention, therefore, of the appellant that the income was not chargeable to tax for the year 1939-40 cannot be accepted".

23. The learned Advocate General argues that this case is very near the facts of the present case. It is true that between the date when the original Act came into force, and the date of the amendment, the interests of lessees and sub-lessees of mines and minerals did not vest in the State, but as soon as the amendment came into operation retrospectively, we must consider that such interests were affected, not on the date of the amendment, but retrospectively from the date when the Act came into operation originally. This is not to be taken merely notionally but as a fact. In other words, you must consider that as a fact the present definition was in, existence on the date when the original Act came into operation and, therefore, the interests of lessees and sub-lessees in mines and minerals vested in the State under the original Act, provided however, that the necessary preliminaries required by law had been fulfilled. He admits that this does give rise to hardship. In the interval, the sub-lessees might have paid to their lessees, rents and royalties which they would be called again to pay to the State. This, he says, cannot be helped and sub-lessees may recover the same from the lessees. Regarding the various English authorities cited by Mr. Das for the proposition that interpretation clauses in statutes are undesirable, or that legislation, cannot be made by definition, he says that these observations have now become archaic. Modern statutes and especially statutes in India, nearly always have definition-clauses. Indeed, such are the complexities of modern legislation that without such interpretation clauses, it would be difficult to give effect to legislation. He says that no objection can be taken to the proposition that where a definition clause was repugnant to any provision in the body of the Act, the latter provision must prevail. Indeed, he points out that the definition clause in the Act itself is prefaced with this condition. He says however, that if one follows the correct method of applying the principles of retrospective legislation, then there is no inconsistency. Once we consider as a fact that lessees and sub-lessees of mines and minerals are now governed by the original Act and that in fact the law relating to the vesting of their properties came into existence when the original Act came into operation, then there is no scope for inconsistency. Upon this particular point the learned Advocate General has relied on a recent case, *Thakur Raghubir Singh and Others Vs. The State of Ajmer (Now Rajasthan) and Others*, . In this case the Supreme Court was considering the validity of certain sections in the *Ajmer Abolition of Intermediaries and Land Reforms Act (Ajmer III of 1955)*. The Act was passed by the Ajmer Legislative Assembly and received assent on 29-5-55. Section 4 of the Act provided for

vesting of all estates held by intermediaries as defined in the Act, in the State Government, from a day to be notified. The Act came into force on 23-6-55 and 1-8-52 was notified as the date on which estates held by intermediaries would vest in the State Government. Not only was this vesting made retrospective, but Section 8 provided that where an intermediary has granted a lease for any non-agricultural purpose other than mines for a period of 3 years or more and/or did certain acts on or after the 1st June, 1950 and the Collector was satisfied that such leases etc. were entered into in anticipation of legislation for the abolition of intermediaries, the Collector could cancel the lease or contract as the case may be. Wanchoo, J. said as follows;

"The argument is that there can be no retrospective cancellation of a lease granted at a time when the land-owner had a right to dispose of his property as he likes under Article 19(1)(f) and there was no restriction on such a right. It is said that in certain contingencies the cancellation of a lease might expose the land-owner to the risk of paying compensation to the lessee, particularly in cases where the land-owner might have realised the entire lease money in one lump sum for a lease of more than three years" duration. We are of opinion that there is no force in the contention. The Legislature was certainly competent, under Entry 18 of List II of the 7th Schedule to the Constitution relating to land, to make this provision. It cannot be disputed that the Legislature has power in appropriate cases to pass even retrospective legislation. Provisions for cancellation of instrument already executed are not unknown to law; for example, the Insolvency Act provided for setting aside transfer made by an insolvent under certain circumstances. Therefore, the Ajmer Legislature certainly had the power to enact such a provision, and in the circumstances in which this provision has been made in the Act, it cannot be said that it is not protected under Article 31A."

24. The learned Advocate General points out that here was a vesting made retrospectively, and the argument that in the meanwhile transactions may have been entered into by the persons affected, was considered of no importance. On this particular point another decision is cited, *Attorney General v. Pougett* (1816) 146 ER 130. In this English case, certain goods were exported and the duty paid. An Act of Parliament was made amending an earlier Act and imposing certain additional duties. This was a correcting Act and purported to make the duty payable from the date of the original Act. It was argued that once goods had been exported it would be a most embarrassing and ruinous thing to merchants, who speculated in their trade, and of course are guided in their calculation by the amount of the duty chargeable on exportation at the time of their shipment, if before the vessel should get out of the river, or be actually beyond the limits of the Port, they would become liable to new duties imposed in the meantime, by which their venture might be defeated and themselves ruined. This argument was however not accepted. It was held that the mistake of the former Act being corrected by the Act which was afterwards passed for that purpose, there was a relation back to the time when the duties were originally imposed. My attention

has been drawn to the House of Lord's case (1952) AC 109 where Lord Asquith pointed out that where the statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

25. These being the principles which are now firmly established for the interpretation of a deeming clause, and/or retrospective legislation, it is clear that I must read the amended definition, as being contained in the Act originally. It is true that the clause is a deeming clause and therefore, the amended definition was not there originally, but I must consider that the definition as amended existed in fact when the Act came into operation originally. Head in that light, there is no inconsistency, although there may be hardship. It is obvious that many things have happened in the meantime, and it appears that as a matter of fact sub-lessees have paid large sums to the lessees. That kind of hardship by itself would not make the statute illegal, although highly unjust. As I said, if you consider the definition as amended to be in operation from the beginning, the inconsistency disappears. At least I do not find the provisions to be rendered absurd. It is true that in sections 28 and 29 the result would be slightly inartistic. That would, however, not render the legislation void. . Nor would it be possible to interpret those sections ignoring the present definition of the word "intermediary". In this connection however, there is a point of the utmost importance to be considered. The Act is intended to acquire the estates of intermediaries and the rights of intermediaries in such estates, and vest them in the State. The law however, requires certain preliminaries to be observed before vesting can take place. In other words, estates or the rights therein of the intermediaries would not automatically vest in Government from the date when the Act came into operation. The essential pre-condition for such vesting is the issue of a notification u/s 4, which lays down that such a notification must be issued, declaring, with effect from the date mentioned in the notification, that all estates and the rights of every intermediary in each such estate, situated in a District or a part of a District specified in the notification, shall vest in the State free from all incumbrances. What was the intention of issuing such a notification? It was to make known to the persons affected, the fact that their estates or rights have vested in the State. In short, the law requires "notice". In this case, a notification was issued, vesting the estates of intermediaries, and their rights therein in the relevant district from 15-4-1955. When that notification was issued, lessees and sub-lessees of mines and minerals were not considered as intermediaries. The giving of a notice has an object. It is to give certain information to the parties affected. This notice must, therefore, be a real notice and not an imaginary one. In this case, it has not to be served individually, but it has to be published in the Official Gazette and also in such manner as has been laid down in Subsection (3) of Section 4. When the notification was issued, Government intended to convey and did convey to the intermediaries, then coming within the definition of the Act that their estates and rights therein have

vested in Government. Lessees and sub-lessees of mines and minerals were not included and there was no intention of giving them any notice. Upon the giving of notice, many consequences ensue. For example, Government gets a right to possession, and the intermediary also has certain rights, e.g., the right of retention u/s 6, as also right to compensation. Since the amendment of the definition is retrospective, I have to imagine that Government acquired a right of acquisition of the estates and rights therein of lessees and sub-lessees of mines and minerals from as early as February, 1954 when the original Act came into operation. There is however, nothing in Section 4 as it stands now, to lay down that I have to deem that a notification issued in 1955 should be considered as a notice to lessees and sub-lessees, who were then outside the purview of the Act and have only come in by reason of the amendment in 1957. As I have said, a notice must in fact, be given, to amount to notice and cannot be notional. I will give an example. Suppose a piece of legislation is passed stating that all houses in Calcutta would vest in Government. No exception can be taken to such a legislation, even if it is provided therein that such vesting would be deemed to have taken place ten years ago. Suppose however, that the statute says that all such houses would vest in Government, provided notice is given to the owners and occupiers and after giving them an opportunity to remove their belongings, and after giving them time for evacuating. Here again, provided the notice is given, there is nothing to say. Such a notice must however be a real notice. Supposing it were said that a notice given many years ago and to a different set of persons should be considered as the requisite notice, then the very object of giving notice is frustrated. It had not conveyed the information to the persons affected so that they might exercise the rights given to them under the Act of removing their belongings and making arrangements for evacuation. Unless the Court is compelled to interpret the law in that fashion it cannot accept such a grossly unjust interpretation, which almost brings it within the border line of absurdity. If the Act said expressly that a notification issued u/s 4 in 1955 would be deemed to be a notification under the Act, also in respect of lessees and sublessees of mining interests, then I should be powerless. But there is no such provision. All that I have to do is to hold that the Government acquired a right in 1954 of effecting the acquisition of estates and rights in such an estate of intermediaries, including lessees and sub-lessees of mines and minerals, The existence of such a law must be considered to be a fact as from the inception of the Act. The Act requires a notification declaring such estates or rights to be vested in Government, and a notification has to be published in a particular manner conveying information to the particular persons affected, that such a vesting has taken place so that they may exercise their rights and discharge their liabilities under the Act. I am unable to hold that a notification issued and published in 1955 relating to a certain set of persons must also be considered as or deemed to be a notification upon a different set of persons, but with effect from the original date mentioned therein. There is no provision for such a notice to be retrospective. I will put it in still another way. By the Act, the State Government is given the power to acquire property belonging to certain set of

persons, say A, B, C and D. The law further says that before you acquire their properties you should give notice to all of them so that they may safeguard their rights in a certain manner laid down in the Act and also be burdened with certain liabilities under the Act. Some of these acts were to be done within a specified time. Upon the Act coming into operation, the State Government gives a notice to these persons namely, A, B, C and D. After some years, the law is amended by saying "that the State Government will also be able to acquire properties of E and F, provided such notice is given. In my opinion, the State Government cannot be heard to say that the original notice given to A, B, C and D should be deemed to be a notice upon E and F. Firstly, no such notice was in fact given, secondly, if we were to imagine such a state of things, then the whole object of the notice has been frustrated. E and F never knew within the date mentioned in the notice that their properties had been so vested and could take no steps to safeguard their rights, or in any way act according to the provisions of the statute. In most cases, no further action could be taken, the time to do so having already expired. In my opinion, no Court, unless compelled to do so, could possibly come to such a conclusion. I make it clear that I am not basing my finding on the question of hardship. I accept that the plea of hardship is of no avail in such cases. The question is what is the intention of the Legislature and what has in fact been enacted. In my opinion, it was not the intention of the Legislature that these persons or class of persons who have been included by way of amendment, should not be afforded the opportunities that were afforded to other intermediaries under the Act. The effect of the amendment is that since 1954 the State Government must be taken to have possessed the right of acquiring the estates or rights therein of all intermediaries including those of lessees and sub-lessees of mines and minerals. But in the case of those persons who have been included as a result of the amendment, namely, lessees and sub-lessees, a fresh notification must be issued in terms of Section 4, in order to vest their estates and rights therein in the State Government. It is admitted that as yet there has been no such notification. In my opinion, once that notification is published in the manner required by the Act," there is no difficulty in working out the provisions in the body of the Act with regard to the class or classes of persons included within the definition of an "Intermediary" by the amendment.

26. I shall now deal with the answers given to the point, namely, that the Estates Acquisition Act had not contemplated the acquisition of mines and minerals at all, and that in any event the acquisition of the interests of lessees and sub-lessees of mines and minerals is unconstitutional and void. I have enumerated above, at some length, the argument of Mr. Das to the effect that the Estates Acquisition Act was intended to introduce agrarian reforms and that it has only to do with surface lands which are used for agricultural or horticultural purposes, and has nothing to do with mines and minerals. Further, I have referred also to his argument that the object was to abolish intermediate interests and bring the State face to face with the tillers of the soil. That again, according to Mr. Das, has nothing to do with mines and minerals or underground rights. Although that

was his broad proposition, he qualified it to this extent that a zamindar had undoubtedly underground rights, and was the owner of mines and minerals below the surface. He says that such rights have vested in the State. His argument, however, was that the right of mining for minerals was an incorporeal right and no such rights resting in lessees and sub-lessees were ever intended to be dealt with under the Estates Acquisition Act. Finally, he says that the acquisition of the rights of lessees and sub-lessees amounted merely to the acquisition of money claims and this had no public purpose. So far as the broad proposition is concerned, namely that the Estates Acquisition Act only deals with agricultural and horticultural lands, I am unable to accept this proposition, and as I have mentioned above, Mr. Das has himself qualified his argument in this behalf. It is unnecessary at this stage to recapitulate the objects of the State legislature in introducing the Estates Acquisition Act. Such Acts have been introduced in all the States in India and have been the subject matter of interpretation by the Supreme Court in numerous cases. The words "agrarian reforms" or "bringing face to face with the tillers of the soil" have certainly been used in the various decisions. That, however, does not mean that the Estates Acquisition Act cannot deal with any right except agricultural or horticultural lands. The word "estate" has not been defined in the Act, but we have to borrow the definition from the Bengal Tenancy Act. It is true that the Bengal Tenancy Act does not deal with mines and minerals. It must not be forgotten however that the Estates Acquisition Act purports to acquire not only the estates of the intermediaries, but also their rights therein. It is conceded that so far as the zamindar is concerned, underground rights are ancillary to his rights in property. Thus there can be no objection to the acquisition of such rights. In fact, most of the State Acts dealing with the abolition of zamindari and other estates, contain provisions for the acquisition of mines and minerals. I have already referred to the Supreme Court decision *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, cited by Mr. Das himself, for the purpose of showing that such legislation should be taken to be confined to surface land. I have also quoted above the portion of the judgment of Mahajan J., relied upon by the learned Counsel. In that case, the Supreme Court was dealing with a similar piece of legislation, namely, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951). Speaking about that Act the learned Judge says as follows:

"Chapter VIII deals with the management and tenure of lands in Berar. A separate provision has been made for the determination of compensation payable to lessees of mines and minerals, Under the provision of Section 218 of the Central Provinces Land Revenue Act and Section 44 of the Berar Land Revenue Code there is a presumption that all mines and minerals belong to the State and the proprietary rights in them could be granted by the State to any person. Wherever a right of minerals has been so assigned, provision has been made regarding its acquisition and the consequences as resulting from such acquisition".

27. As is indicated in the said judgment, the "main purpose" of the Act in question was to bring the actual tillers of the soil in direct contact with the State by elimination of intermediary holders. Similarly, in the West Bengal Estates Acquisition Act, the main purpose is the acquisition of zamindari interests in land. But the zamindari interest included also the underground rights. It was never the intention of the Act to leave such an interest outstanding or remaining in the zamindar. It is then argued that the interests of the zamindar in mines and minerals may be acquired, but it was not the intention to acquire the interests of lessees and sub-lessees. From the materials placed before me, I see no reason to arrive at such a conclusion. Let us see what the scheme of the Act was, before the amendment. The word "intermediary" originally meant a proprietor, tenure-holder, under-tenure holder or any other intermediary above a raiyat or a non-agricultural tenant and included a service-itenure-holder. In this definition, there was no specific mention of mines and minerals. u/s 5 it is provided that upon the due publication of notification u/s 4, on and from the date of vesting the rights of all intermediaries in the sub-soil, including rights in mines and minerals shall vest in the State. Indeed the subject of mines and minerals was deemed to be of such importance that it was provided for in a separate chapter, namely, chapter IV entitled "mines and minerals". u/s 27 contained in the said chapter, it has been provided that the provisions of chapter IV shall have effect "notwithstanding anything to the contrary elsewhere in this Act". u/s 5 we have seen that all rights in the sub-soil has vested in the State. Sections 28 and 29 introduce a specific policy in respect of mines and minerals, where such mines were being actually worked or where prospecting or development work was being done or had already been done in respect thereof. Section 28 lays down that where the intermediary concerned was actually working a mine, then it would be deemed to have been leased to him by the State, on terms and conditions as may be agreed upon or as settled by the Mines Tribunals. Section 29 speaks of existing leases of mines and minerals. While Section 28 deals with a case where there was no existing lease, Section 29 deals with the case where a lease existed. In such a case, the holder became a lessee directly under the Government on terms and conditions of the existing lease with additional conditions specified therein. The additional conditions show that the idea was to allow the parties actually working or doing prospecting or development work to retain possession. A certain time would be granted to those who had not done so and thereafter the land, together with mines and minerals, would be resumed. Section 31 lays down principles of compensation. It even contains provisions for compensation to be paid in respect of land where there were minerals not yet prospected or developed or partially prospected or developed and then abandoned. It is true that in this chapter no mention is made of sub-leases and that is why doubts arose as to whether sub-leases were included within the provisions of the Act. That being the position, I do not see any strength in the argument that the Act concerns only surface land devoted to agriculture and horticulture. As I have said, it is possible to argue that the word "estate" being linked with the Bengal Tenancy Act, includes only agricultural and horticultural land. But as I have pointed out what vests in the

State is not only the estate of the intermediary but also his rights therein. It is admitted that underground rights were ancillary to the rights of the zamindar in surface lands. Now, if it was the intention of the State to take hold of the zamindars' rights in mines and minerals and also of the lessees under him, it seems impossible to conclude that the acquisition of the rights of the lessees or the sub-lessees in mines and minerals is utterly foreign to the purposes of the Act. The lessees of mines and minerals were already included specifically. All that has happened is that under the amendment the lessee as well as the sub-lessee has been expressly defined to be an "intermediary" and the provisions of the Act would now be applicable to such interest to say that the Act is a piece of legislation for "agrarian reforms" is fairly correct, but the matter is not concluded by the description. The idea is quite clear, and has been repeatedly clarified in the decisions of the Supreme Court. Large blocks of land were being held by zamindars or other middlemen. While the poor cultivator tilled the soil, he got very little of the produce. These middlemen not only had rights over the surface lands but also underground rights. As we all know, land-tenure in India during British times and in the past has always been a most complicated affair. A series of middlemen fattened themselves on the soil, without actually tilling the same or working the underground rights. The intention was to do away with all such middlemen at one stroke. The idea was that there should be only in existence two kinds of rights; -- the right of ownership in the State and the right of persons who actually tilled the soil or worked a mine. A lessee who parted with possession to a sub-lessee and enjoyed the rents and royalties was in the same position as any other middlemen. If it was the intention to abolish all middlemen, then I do not see why his rights should continue to exist, and be excluded from the purview of the Act. I next come to the point, namely that the interests of lessees and sub-lessees which is sought to be acquired, amount to an acquisition of a money claim and therefore, cannot be said to be a public purpose. The learned Advocate General does not contest the proposition that the acquisition of money is not a public purpose. He, however, argues, and I think, correctly, that it is not the object of the Act to acquire money. The interests of the lessee and the sub-lessee in underground rights is a right, which is not merely the right to a money claim. By a lease or sub-lease of mineral rights, the proprietary right to the minerals is naturally affected. It is true that the lessee who has parted with possession to a sublessee gets only a money-payment, but it would be incorrect to characterise his rights merely as a right to money. The right to get a money payment arises out of his right to the property. A sub-lessee pays rents and royalties because he can take out minerals and appropriate them. If the abolition of middlemen in respect of surface right to land be a public purpose, I do not see how the abolition of middlemen in respect of rights in minerals lying under the surface can be said not to be a public purpose. Whether such abolition will prove to be really useful to the people of India is a matter of policy I with which I am not concerned. In my opinion, it is incorrect to say that the provisions in the Act relating to the acquisition of the interest of lessees and sub-lessees in mines and minerals is an acquisition of a mere money claim, or is merely intended to

augment the revenues of the State and therefore, bereft of any public purpose. In this view of the matter, I need not dwell at length on Article 31A of the Constitution. I shall, however, deal with it briefly.

Mr. Das has drawn a conclusion from the difference in the language of Sub-clause (a) and Sub-clause (e) of Clause (1) of Article 31A. He says that in Sub-clause (a) the word "acquisition" is mentioned, whereas, in Sub-clause (e) only "extinguishment or modification" has been mentioned but not "acquisition". Since Sub-clause (e) deals specifically with leases of minerals it is argued that Article 31A does not concern itself with the acquisition of such rights. I am unable to accept this argument. Sub-clause (a) is very general in its term, and would include the acquisition of any estate or of any rights therein, as also the extinguishment or modification of such rights. Provided that the lessee or sub-lessee in an intermediary and holds an estate or any rights therein, it cannot be said that Sub-clause (a) has no application. In any event, the provisions as to lessees and sub-lessees of mines and minerals which have been introduced by the amendment come within the expression "extinguishment or modification". Either such right is extinguished or modified. I do not see what else could be done with it.

28. I think it is appropriate here to deal with a point made by the learned Advocate General. He argues that u/s 4 of the Act, upon the notification being made as required under that section, the estate of every intermediary and all his rights in such estate vest in the State "free from all incumbrances". He argues that a lease or a sub-lease of any part of the estate or relating to any right therein is an "incumbrance". The word "incumbrance" has not been defined in the Act. The definition given in Sub-section (h) of Section 2 is incomplete. Therefore, we have to go to the Bengal Tenancy Act for the definition of the word "incumbrance" in regard to an estate and to the legal meaning of that word in respect of rights to an estate. In *Jogeshwar Majumdar v. Abed Mohamed Sirkar* 3 CWN 13, it has been held that a lease is an incumbrance under the Putni Regulation VIII of 1819. Rampini J., says as follows:

"The defendants hold under a lease granted to them by a former Patnidar. We think that a lease, just as much as a sale, gift, or mortgage, must come within the meaning of the word "incumbrance". An "incumbrance" would seem to mean anything that restricts or limits the rights of a Patnidar. and interferes with his enjoyment of the subject of the purpose."

29. This view was upheld in *Rash Behari Mandal and Others Vs. Hemanta Kumar Ghose and Others*, . In *Girish v. Secretary of State* 24 CWN 184: (AIR 1920 Cal 326) it was held that subtenants who could be ejected at will had a sufficient interest in the land to claim compensation under the Land Acquisition Act, where land vests in the State free from incumbrances upon acquisition. In *Jog Narain Singh v. Badridas* 16 Cal LJ 156 it was held that a mortgage or a charge is an incumbrance as defined in Section 161 of the Bengal Tenancy Act. The law on the subject was considered by me in *Surpat Singh and Others Vs. State of West*

Bengal and Others, . In The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, Ayar J., was considering a case of acquisition under the Land Acquisition Act. The learned Judge says as follows:

"Under Section 16, when the Collector makes an award "he may take possession of the land which shall thereupon vest absolutely in the Government free from all incumbrances". The word incumbrance in this section can only mean interest in respect of which a compensation was made u/s 11 or could have been claimed".

30. The question, whether, because the estate or rights therein vest in the State free from incumbrances, all rights to leases in mines and minerals are also extinguished, is a matter not free from difficulty, and I do not see why it is necessary for me to finally determine it. As the law stands there is an express provision in the Act now for the vesting in the State of such rights, and "such interests, and for dealing with the same. In other words, prior to the commencement of the Act, land and all that lay below its surface was the subject matter of a complicated catena of ownership. This system gave rise to the emergence of the "middleman". So long as the system remained within bounds, the ultimate tiller of the soil was not affected. But when the list of middlemen grew long, including absentee zamindars who took no interest in the land excepting what they could extort from the present, the system stood condemned. The object with which the permanent settlement had been introduced by Lord Cornwallis had long been forgotten. It was to remedy this state of affairs that the Estate Acquisition Act was introduced. The idea was to abolish all middlemen. Land and all rights in land, whether above the surface or underneath, would belong to the State, which means the people of India. The question then arose as what was to be done with those who were already in possession. For them, the Act contemplates a limited benefit. As regards the surface, an intermediary is allowed to retain his homestead and a certain amount of land which was in his khas possession. He may be allowed to retain a tank-fishery, and so forth. In all such cases, however, the Government becomes the owner and the intermediary holds as a tenant paying rent. As regards the underground rights in mines and minerals or any other underground rights that may have existed in the intermediary, they also vanish and vest in the Government. In this case also, a limited benefit is granted to those who were actually carrying on the operation of mining or even doing prospecting work or any work of development. Here also, the ownership vests in the Government and such persons would be considered to hold as tenants or lessees under the Government. The picture thus becomes complete, and I do not see that there is any scope for introducing any rights remaining in the middleman and not vested in the State. If there is no "public purpose" involved in all these operations then indeed one may say that the whole Act is void. But if there is a "public purpose" involved in getting rid of superfluous middlemen then I am unable to come to the conclusion that it was ever intended to keep outstanding any such rights as that of a lessee or sub-lessee in mines and minerals. If, of course, the legislation was faulty, such may have been the inadvertent result. I cannot say that this piece of

legislation is by any means perfect. In keeping with many other hasty legislations this Act also discloses signs of careless drafting and hasty repairs. The amendment of the definition of the word "intermediary" is an instance to the point. It will appear from the facts stated hereinbefore that subsequent to the promulgation of the original Act, the Governmental authorities kept on changing their interpretation of its meaning. At first it was given out that the lessee, or at least the sub-lessee of mines and minerals was not affected. Later on somebody woke up to the desirability of enmeshing the lessee and sub-lessee of mines and minerals into the net of legislation. The result was an amendment in the definition. No part of the body of the Act was however amended or brought into line. It is this curious state of affairs that has given rise to this application. As I said, if the legislation could be proved to be faulty then the results, however bad they may be, would have to follow. The Court must however endeavour to give effect to the intention of the legislature, although it cannot remedy the defects. Giving the matter my anxious consideration I have arrived at the conclusion that, Mr. Das, in spite of his very able and critical attack on the provisions of the Act including the amendment, has not been able to establish that the amendment is not valid or that it does not cover the law as enacted in the body of the Act, or that the rights of lessees and sub-lessees of mines and minerals remained unaffected by the provisions, or that the effort to include them within the mischief of the Act was unconstitutional.

It remains for me to deal with only one aspect of the question upon which a considerable argument was advanced. It was argued that the subject of mines and minerals is a Central subject. That it is so is not disputed. Indeed, a long list of statutes including Rules and Regulations made in exercise of powers granted under such statutes have been placed before me. It has been argued that many of the provisions of the Central Acts, Rules and Regulations clash with the provisions of the Act. For example, it is stated in Section 28 that if an intermediary is working a mine then he shall become a Lessee directly under Government on terms and conditions as shall be agreed upon between him and the State Government. It is pointed out that under the statutes, Rules and Regulations framed by the Central or the Central Government, mining leases can only be granted to certain persons or class of persons approved by or under the Acts, or Regulations mentioned above. Similarly, it is pointed out that u/s 29 a lessee or a sub-lessee would come to hold directly under Government, on the same terms and conditions as his lease or sub-lease already existing with certain additional terms. This, it is pointed out, may come in conflict with the provisions of the Central Acts, Rules and Regulations. That may well be. But this appears to be expressly provided for in the Act, inasmuch as both sections 28 and 29 are subject to the proviso that all such terms and conditions shall be consistent with the provisions of any Central Act for the time being in force relating to the grant of mining lease or modification thereof. With these provisos the operations of the Central Acts, Rules and Regulations are kept in full force, if there is any clash between any provision of the Act and Central Acts, Rules and Regulations, the

Central Acts, Rules and Regulations will prevail. That takes away the force of the argument advanced. In my opinion, the provisions of the Act are not avoided on this ground.

31. The result is that this Rule should succeed partially. Since a notification u/s 4 issued in 1955 is not sufficient to vest the right of lessees and sub-lessees in mines and minerals in the State of West Bengal, there must be issued a high prerogative writ directing the respondents not to treat such interests as vested in Government as yet. It must be remembered however, that so far as the original Act is concerned, that is to say the Act before the amendment of the definition of the word "intermediary" the interest of the lessee of mines and minerals was not wholly unaffected. I have already pointed out that the rights of the intermediary in the sub-soil, including his rights in mines and minerals, vested in the State u/s 5, upon the publication of the notification u/s 4. There is no dispute that the interests of the zamindars vested in the State, including their rights in the sub-soil, e.g., rights in mines and minerals. Where a zamindar had granted a lease in respect thereof, Chapter IV of the Act affected such a lease. Under that Chapter, both the intermediary and his lessee, in so far as they had been actually working mines, or in the latter case even where certain prospecting work had been done, such rights were preserved. The lessee became a direct lessee under the State. As I have also pointed out, there was no specific provision with regard to sub-lessees. The result is, that these provisions are all good, and so far as lessees are concerned, their position was already the subject matter of the provisions contained in Chapter IV. This decision of mine, therefore, really affects the interests of sub-lessees. In respect of sub-lessees, until appropriate notification u/s 4 is published, there is no privity between them and the State, and their rights are unaffected. If and when a notification is published, their estates would vest in the State. Chapter IV does not contain any specific mention of sub-lessees, but I presume that they would then become direct lessees under the State. If, however, the Lessee had any outstanding interest other than as provided for in Chapter IV, such interest would also vest in the State upon such a notification being published, but subject to such provisions.

32. The result is that this Rule succeeds partially and there will be a writ in the nature of mandamus restraining the State of West Bengal from attempting to take possession of the rights of the lessees and sub-lessees on the ground that such rights have vested in the State. This will be, however, without prejudice to the rights of the parties already provided for by the Act otherwise than by reason of such vesting. There will be a Writ in the nature of Certiorari quashing the notices dated 23-8-1956 (Ext. E) and 15-2-1957 (Ex. F) in so far as they demand payment of rents and royalties directly from the sub-lessees. There will also be a Writ in the nature of Mandamus directing the respondents not to give effect to the same.

33. This will however be without prejudice to the right of the State to proceed to take steps for the vesting of such rights in the State in accordance with law and

to make demands if and when the vesting has taken place.

34. I neither find it necessary to deal with the settlement proceedings mentioned in the petition and affidavits, nor have I done so. Such proceedings will take place in accordance with law.