

(1953) 01 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 13 to 16 and 25 to 28 of 1952

K.C. Gajapati Narayana Deo and Others

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 30-01-1953

Acts Referred:

Constitution of India, 1950 — Article 200, 201, 246, 31, 31(2)
Evidence Act, 1872 — Section 35, 78, 78(2)
Government of India Act, 1935 — Section 299(2)
Orissa Agricultural Income Tax (Second Amendment) Act, 1950 — Section 1
Orissa Estates Abolition Act, 1951 — Section 1, 2, 26(1), 27(1), 37

Citation : AIR 1953 Ori 185

Hon'ble Judges : Jagannadhadas, C.J.;Narasimham, J

Bench : Division Bench

Advocate : V. Vedantachari and B.K. Pal, in No. 13 of 52, K. Raja Iyer, D.V.N. Raju, B.K. Pal and N.V. Ramdas, in Nos. 14 and 15 of 1952, K. Raja Iyer and B.K. Pal, in No. 16 of 52, D.V.N. Rao and S.C. Palit, in No. 25 of 52, D.V.N. Raju and N.V. Ramasas, in No. 26 of 52, M.S. Mohanty and B.K. Rath, in No. 27 of 52, for the Appellant; A.G., Government Advocate and Assistant Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadha Das, C.J.—These are applications under Article 226 of the Constitution for the issue of mandatory writs against the State of Orissa restraining them from issuing any notifications or taking any other steps under the Orissa Estates Abolition Act, 1 of 1952, in so far as the estates to which these applications relate. These eight applications concern eight permanently settled estates of the ex-Madras area, which since 1-4-1936, became part of the then newly formed State of Orissa. All the applications involve substantially the same questions and are therefore dealt with together.

2. The trend of economic and political thought of the nation has insisted upon the abolition of Zamindari tenure and the elimination of intermediaries between the

State and the cultivator as the first step in any general measure of agrarian reform. It has been considered that concentration of large blocks of land in the hands of a limited number of Zamindars denying fair distribution thereof to the cultivators and the existence of intermediaries between the State and the cultivators, tending to insecurity and oppressive rents for the tillers of the soil, and the development of absentee landlordism and sub-in-feudation of tenures, have produced deleterious effects on the improvement of agriculture which is the main occupation of the predominantly large rural population of the country. In consonance with this trend of ideas, quite a number of States have taken steps to abolish the Zamindari and for eliminating intermediaries even before the new Constitution of India came into force. Schedule 9 of the Constitution, which has been added by a later amendment of the Constitution, enumerates the various enactments passed by some of the States in this behalf. Three of those legislative measures viz., the Estates Abolition Acts of Bihar, Madhya Pradesh and Uttar Pradesh came up almost simultaneously for the consideration of Courts. The Patna High Court pronounced the Bihar Act to be unconstitutional, while the High Courts of Allahabad and Nagpur pronounced the Acts of their respective States to be valid. As against these judgments, the unsuccessful parties presented appeals or applications to the Supreme Court. While the matter was thus pending and in view of the Patna judgment, the provisional Parliament of India took it up on hand and amended the Constitution by enacting new Articles 31A and 31B with retrospective operation. The validity of this amendment was challenged before the Supreme Court, but it was upheld by the judgment in --"Shankari Prasad Singh v. The Union of India", AIR 1951 S. C. 458(A). In the light of this judgment, the main ground on which the Patna High Court held the Bihar Act to be unconstitutional was no longer available. But various other objections to the validity of the concerned Acts as a whole were raised before the Supreme Court at the hearing of the Bihar appeal and those objections were all unanimously overruled by the Court in its judgment reported in -- The State of Bihar Vs. Sir Kameshwar Singh, , and only a few specific provisions were held invalid by a majority. All this is now passing into history.

3. The Orissa Estates Abolition Act 1952, the validity of the entirety of which or of parts thereof, is the question that substantially arises on these applications, is not one of the Acts mentioned in the 9th Schedule of the Constitution. It does not, therefore, get the protection of the new Article 31B. But the Orissa Estates Abolition bill was introduced in the State Legislative Assembly on 17-1-1950 and was passed by the Legislative Assembly on 28-9-51. It was also reserved by the State Governor for consideration of the President and received his assent on 23-1-52. This Act, therefore, obtains the protection of Article 31(4) and of the new Article 31A of the Constitution, in so far as they are applicable to the provisions thereof. It is necessary to note that there have been some changes from the provisions of the Bill before it was passed as an Act. The question whether and to what extent those changes are entitled to the protection under Article 31(4) or 31A may have to be considered when it arises. It has to be

mentioned that the present applications were filed in June, 1952, and that subsequent thereto, the Orissa Act was amended in certain respects. It will be seen that the said amendments are primarily for the purpose of giving effect to the decision of the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, which, while upholding the validity of the Bihar Act, held two individual provisions thereof as invalid. There were also a few other amendments, the more important of them being a change of meaning of "date of vesting" and an alteration of Section 4 of the Act relating to voluntary surrender of the estates by the proprietors. The Act amending the Abolition Act was passed by the State Legislature on 5-7-52 and assented to by the President on 27-8-1952.

4. Before noticing the arguments raised at the hearing of these applications, it will be useful to give a brief summary of the scheme of the Act. The Orissa Estates Abolition Act as amended, follows in the main, the pattern of similar Acts of the other States passed for the same purpose. It provides for the transference of the ownership of the estate of any landed proprietor from him to the State on the issue of a notification for such estate. It authorises the State Government to take over the possession and management of the estate and converts the previous raiyat of the proprietor into a raiyat of the State. It also transforms the temporary cultivator or tenant of the proprietor into a tenant of the State. It provides for payment of compensation to the dispossessed proprietor on certain principles prescribed by it. It further provides for the consequential management of the various estates, thus taken over, by the formation of suitable administrative units, the management of which is to be vested in local authorities called Anchal Sabha to be constituted in the prescribed manner (presumably expected to be a democratic local body) which is to work under an Anchal Adhikari appointed by the State Government. This Act, unlike its sister Act of Bihar, sets out the public purpose, which inspired the legislative measure, in clear and unmistakable terms in its preamble, as follows:

"Whereas in pursuance of the Directive Principles of the State Policy laid down by the Constitution of India, it is incumbent on the State to secure economic justice for all and to that end to secure the ownership and control of all material resources of the community so that they may best subserve the common good, and to prevent the concentration of wealth and means of production to the common detriment;

And whereas in order to enable the State to discharge the above obligation, it is expedient to provide for the abolition of all the rights, title and interest in land and intermediaries by whatever name known, including the mortgagees and lessees of such interest, between the raiyats and the State of Orissa, for vesting in the said State of the said rights, title and interest and to make provision for other matters connected therewith;

It is hereby enacted as follows: etc,"

The transference of the ownership of the estates from the proprietors to the

State is brought about by the definition of the words "estate", "intermediary" and "date of vesting" taken with the provisions of Section 3 of the Act, which empowers the State Government to declare by notification from time to time that the estates specified in those notifications have passed to and become vested in the State free from all encumbrances. u/s 4, the State Government can invite from proprietors, proposals for surrender of their estates and if, such proposals are accepted the estate vested in the Government accordingly. Otherwise, on the issue of notification u/s 3, the estate vests in the Government, the date of vesting being the date of publication of notification. The legal consequences of such vesting are elaborately specified* in Section 5 of the Act. Broadly speaking, the consequences are as follows: All the lands cultivated or uncultivated or non-cultivable, within an estate including waste lands, trees, orchards, pasture-lands, forests, mines, minerals, quarries, rivers, streams, etc., as also fisheries, ferries, Hats, Bazars and buildings or structures comprised within the estate, shall vest in the Government. The proprietor, however is allowed to keep such of the land which is in his own personal cultivation. He can also keep such of the buildings which are "not" in use for estate or office purposes, that is to say, he can remain in the possession of residential buildings, or buildings which are under use for other personal purposes, such as for instance those used for storing personal grains or for keeping personal cattle or implements as also buildings used for factories or mills or for purposes of trade, manufacture, or commerce. Mines which are under the actual direct operation and working of the proprietor also are allowed to remain in his possession. The possession of all the rest of the items of property comprised within the estate passes over to the State. In respect of such of the items of property left in the possession of the proprietor, he becomes a statutory tenant of the State paying same rent to the Government as determined.

5. The broad principle for assessment of compensation that has been adopted is that it is to be calculated at a certain number of years" purchase of the net annual income of the estate during the previous agricultural year, i.e., the year immediately preceding that in which the date of vesting falls, which means the date when the notification relating to the vesting was issued. The multiple of the net annual income taken for the calculation of compensation is one, based on a sliding scale applicable to the net income of the estate on a slab system, the largest multiple being applicable to the lowest slab, and the smallest multiple to the highest slab. Thus the multiple of 15 is applicable for the lowest slab of first Rs. 500/- net income and a multiple of 3 is applicable to the highest slab above Rs. 40,000/- annual income. In order to arrive at the net annual income of the previous year, first the gross assets of the previous year have to be calculated. The gross assets roughly speaking, are the aggregate of all the rents including cesses payable by the raiyats, and by the immediately subordinate intermediaries as also the income from fisheries, trees, Jalkars, ferries, Hats and Bazars or of any other interests appertaining to the estate, plus the income from forests on the basis of appraisal made by the Forest Officer, and the rents

determined in the prescribed manner, of office and estate buildings taken over by the State. Out of the aggregate gross assets of the previous year, certain deductions are made in order to arrive at the net income.

6. They consist mainly of: (1) Land Revenue or rent, including cesses, payable to the State Government or to the immediately superior intermediary for the previous agricultural year; (2) Any sum payable as the Chok-dari or Municipal Tax in respect of buildings taken over as office or estate buildings; (3) Cost of management according to a sliding percentage scale with reference to gross income; (4) Agricultural Income Tax payable in the previous year; as also (5) Any other sum payable as Income Tax derived from the estate other than by way of royalties from mines. There are certain other minor items both regards gross assets and deductions which do not require detailed enumeration. One noticeable feature of the assessment of compensation is that what is taken into account, is generally only the actual income derived in the previous year from the various sources, subject to various deductions, but not any potential income from undeveloped resources of the estate. But so far as the mines taken over by the State are concerned, the displaced proprietor gets compensation which is to be determined by the Compensation Officer in pursuance of principles laid down in Section 30 of the Act. It is to be noted that the amount so payable as compensation in respect of mines is to be by way of an addition to the amount determined with reference to the annual net income as regards all other items comprised in the estate, as above indicated (see Section 28). Further, in respect of waste lands, if the intermediary has made any improvement, compensation for the same is also assessed and added. On determination of the amount of compensation according to the prescribed procedure, and subject to the specific right of appeal to a Judge of the High Court to be appointed by the State Government, the payment thereof is provided for by enacting as follows. The compensation shall be due as from, the date of vesting and shall carry interest from that date at the rate of 21/2 per cent per annum, The said amount is payable in 30 annual equated instalments commencing from the date of vesting, with the option given to the State Government to make full payment at any time. This broadly speaking, is the scheme of the Act.

7. These applications have been elaborately argued before us and we have had valuable assistance from the advocates who appeared on behalf of the petitioners including the senior Advocates from the Madras Bar and from, the Advocate-General on behalf of the State. The arguments had necessarily to be limited in the light of what has been decided by the Supreme Court in its recent judgment. But, all the same, they ranged over a wide field. It was maintained that certain aspects were not covered by the judgment of the Supreme Court and that other aspects came within the scope of the principles applied by the Supreme Court in pronouncing the invalidity of the two specific provisions relating to (a) arrears of rent and (b) works of benefit. It may be mentioned that at the initial stages of the arguments, the attempt was to persuade the Court that only certain provisions of the Act, or the application of the Act only to

certain items were invalid. Any idea of challenging the Act as a whole was specifically disclaimed. But as arguments advanced, the validity of the Act as a whole came under challenge. There were also certain special arguments relating to Agricultural Income Tax Act, 1950 & to the Madras Estates Land (Orissa) Amendment Act of 1947, which is applicable to some only of the estates covered by these applications. The arguments addressed to us may, therefore, be classed under three broad categories: (I) Challenge to the validity of the Act as a whole; (II) Challenge to the validity of the application of the Act as regards certain specific items comprised within the estates, such as, private lands, waste lands, mines, and minerals and buildings and also of certain provisions of the Act; and (III) Challenge to the validity of certain items which enter into the calculation of compensation and in particular the item of deduction based upon the Orissa Agricultural Income Tax Act, as per the amendment thereof in the year 1950 and to the validity of certain provisions of the Madras Estates Land (Orissa) Amendment Act and steps taken by the State Government thereunder in respect of some of the estates as affecting the calculation of gross assets. These arguments may now be taken up for consideration seriatim.

8. (I). "The objections to the validity of the Act as a whole":-- The main contention in this respect is based on the assumption that what has in fact been decided by the Supreme Court is that the Estates Abolition Acts are not open to challenge only on the grounds that the scheme of acquisition of zamindaries is not for a public purpose or that the compensation provided is grossly inadequate or in some instances illusory or on the ground that the same is arbitrarily discriminatory. It is, therefore, strenuously argued that the scheme of compensation provided under the Act is open to challenge in other respects. The argument, if I understood it aright, was put in this way. Article 31(2) enjoins that

"No property shall be acquired for public purposes under a law authorising such acquisition, unless the law provides for compensation, and either fixes the amount thereof, or specifies the principles on which and the manner in which the compensation is to be determined and given."

Article 31(4) and Article 31A taken together provide that "such a law" relating to estates shall not be called in question on the ground that it contravenes the provisions of Article 31(2) or of any other fundamental rights in Part III, if it satisfies the requirement of the said Articles. It is urged, that what is cured thereby is the law only "in so far as" it relates to the acquisition or taking possession, but not in respect of the provisions relating to compensation, except in so far as such provisions are in conflict with the express provisions relating to fundamental rights. It is urged, therefore, that if it can be shown that the scheme of compensation contemplated by the Act under challenge produces no compensation in the sense that it lacks the attributes of what is considered "compensation" as understood under the law of "Eminent Domain" the scheme of compensation is invalid in its entirety and, therefore, the Act as a whole must go. It is said that while an Act for compulsory acquisition providing some real

scheme of "compensation" is protected by Articles 31(4) and 31A, though) the compensation is inadequate, such an Act with a scheme which results in no compensation is a fraud on the law and hence invalid. To reinforce this argument, learned counsel took us through what are generally understood as attributes necessarily flowing out of the concept of "compensation for compulsory acquisition." In support of this argument, the case in -- "Vanhorne's Lessee v. Dorrance" (1795) 1 LEd 391 (C), and certain passages in Cooler's Constitutional Limitations, Vol. II, pages 1118, 1119, 1120, 1124, 1131, 1147. 1203 and 1204, as also some passages in "Weaver on Constitutional Law" pages 552 to 555 have been relied upon before us, to show that compensation as understood under the law of Eminent Domain, necessarily involves the idea of "just compensation", carrying with it the following attributes: (1) Market-value payable on the footing of compulsory sale; (2) Determination of compensation by a judicial tribunal; (3) Payment of compensation (a) in cash and (b) on the date when possession is taken unless any other method and manner of payment is consented to by the dispossessed proprietor. Certain other cases of House of Lords, and of the Privy Council under the Land Acquisition Act, have also been cited to show how "compensation" in case of compulsory acquisition is generally understood, viz., -- "Central Control Board (Liquor Traffic) v. Cannon Brewery Co. Ltd." (1919) A C 744 (D); -- "Att. Gen. v De Key-ser's Royal Hotel", (1920) A C 508 (E); -- AIR 1925 91 (Privy Council) and -- AIR 1939 98 (Privy Council) . It is, however unnecessary to go elaborately into this argument, because what we have to see is whether this argument is permissible with reference to the terms of the relevant Articles of the Constitution and in the light of the decision of the Supreme Court.

9. An examination of the judgment of the Supreme Court shows that the argument based on the use of the word "acquisition" wherever it occurs as importing by itself definite attributes derived from the law of Eminent Domain, has been specifically negated by all the learned Judges when dealing with the argument of Mr. P. R. Das with reference to Entry No. 33 of List II, and Entry No. 42 of List III. Every one of the learned Judges held that the requirements of a valid law relating to compulsory acquisition must be found with reference to the terms of Article 31(2) of the Constitution itself. His Lordship the Chief Justice went so far as to say in his judgment at page 264 of The State of Bihar Vs. Sir Kameshwar Singh, " as follows:

"When these limitations (public purpose and payment of compensation) are expressly provided for, and it is further enacted that no law shall be made which takes away or abridges these safeguards, and any such law, if made, shall be void, there can be no room for implication, and the words "acquisition of property" must be understood in their natural sense of the act of acquiring the property, without importing into the phrase an obligation to pay compensation or a condition as to the existence of a public purpose."

By parity of reasoning, the word "compensation" as used in Article 31(2) must, I

think, be taken to mean such compensation which fulfils the constitutional requirements prescribed there- I in that is, either (1) the amount thereof is fixed, or (2) the principles on which or the manner in which the compensation is to be determined and given, are specified. The argument that where the amount fixed or the principles laid down for compensation are illusory, the scheme of compensation is open to examination has been specifically mentioned by his Lordship the Chief Justice and is negatived in his judgment as appears from the bottom of 1952 SCJ 360 taken with paragraph 1952 2 SCJ 360. His Lordship Justice S. R. Das, apparently has also the same view as appears from the passage in his judgment at page 284 which is in more categorical in terms and is as follows:

"Article 31(4) protects a law of the description mentioned therein against the provisions of Article 31(2). It follows, therefore, that what is sought to be protected by -Article 31(4) is a law for the acquisition or taking possession of property which does not amongst other things, provide for compensation or does not fix the amount or specify the principles on which and the manner in which the compensation is to be determined and given, for otherwise there would be no necessity for any protection."

The other three learned Judges, however, appear to have been prepared to take a slightly different view, as appears from their judgments. They do not appear to have considered that the provisions relating to compensation that arose for scrutiny in the three Acts with which they were concerned and taken in their entirety were liable to be challenged on the ground that they produce illusory compensation. But they appear to have considered that particular items which enter into the calculation of compensation may be open to examination on the ground that they are not legitimate principles of compensation, but are only principles for deprivation of compensation. What his Lordship Mahajan J. has to say on this matter may be gathered from the following passage at page 273 of his Lordship's judgment:

"However repugnant the impugned law may be to our sense of justice, it is not possible for us to examine its contents on the question of quantum of compensation. It is for the appropriate Legislature to see if it can revise some of its unjust provisions which are repugnant to all notions of justice and are of an illusory nature."

Again his Lordship says at page 275 as follows:

"It was said that the Act, while pretending to comply with the Constitution, evades and invades it; that the Act merely pretends to comply with the Constitution when it says that it provides for payment of compensation, but in effect, it has produced a scheme for nonpayment of compensation by shift and contrivance."

And his Lordship rejects the argument at page 276 in the following terms:

"From the premises that the estates of half a dozen zemindars may be expropriated without payment of compensation, one cannot jump to the conclusion that the whole of the enactment is a fraud on the Constitution or that all the provisions as to payment of compensation are illusory. At best they are illusory only in the case of some only of the large body of persons affected by it."

Both Chandrasekhara Aiyar, J., and Mukherjea, J. who were in general agreement with the judgment of Mahajan, J. in upholding the validity of the Acts as such, while invalidating only a few provisions of the Act, may be taken to have accepted this view of his Lordship Mahajan, J. It is true that these three learned Judges have concurred in pronouncing certain provisions of the Bihar Act as being invalid and as being colourable exercise of the Legislative power with reference to Entry No. 42 of List III. A close scrutiny of the relevant portions of the judgments of the three learned Judges, however, as regards these items lends no warrant for the contention that the provisions of the Act relating to compensation taken as a whole are open to scrutiny on the ground that they result in compensation which is nowhere near the market value. If, therefore, even on the judgment of the majority of the Supreme Court, the fact that the scheme of compensation violates one of the alleged essential attributes of just compensation viz., market value on a compulsory sale, is not a reason for pronouncing the Act invalid, I do not see how it can be maintained that if the Act violates any or all of the other alleged attributes of just compensation as above urged, it can be pronounced invalid as involving a scheme of compensation which substantially negates compensation. It may of course be possible to contend on the judgment of his Lordship Mahajan, J. that where the net result of all the provisions relating to compensation taken together is to produce illusory compensation "in every case" to which the Act applies, such an Act is to be treated as a fraud on the Constitution, not cured by Article 31(4) or Article 31A. Whether that is the real view of the majority by which we are bound or whether the categorical view expressed by his Lordship S. R. Das- J. above indicated is correct viz., that what is protected is a law providing no compensation it is not necessary to decide in this case. It is not contended and it does not appear that the compensation provided for by the Orissa Act produces what may be characterised as illusory compensation "in every case" to which it applies. It appears to me, therefore, having regard to the judgment of the Supreme Court that so far at least as the cases which fall within the scope of Article 31(4), 31-A or 31-B are concerned, the law relating to compulsory acquisition is not open to challenge on the ground that the scheme of compensation provided by it, does not conform to what are said to be the accepted attributes of compensation which in this behalf are alleged to mean "just compensation" and, in that sense only, produces no compensation.

10. It is also relevant to remember that the insistence on the various attributes of compensation which are involved in the American decisions are based on the strongly rooted ideas of "property" as prevalent in their social and economic system. While Article 31 no doubt recognizes the principles that private property

can be compulsorily acquired only under the authority of law and that such law must provide for compensation, some of the ideas relating to what may be called the "fundamental attributes of private property" are in the process of undergoing some change under the impact of socialistic thought. To indicate this tendency in the shift of the ideas relating to "property" it is sufficient to quote an extract from Lauterpacht's "International Bill of the Rights of Man" (1945) which, is as follows:

"Deep social and economic changes have intervened, since Locke considered property to be the most sacred right of all so sacred that he explained the right of personal freedom on the ground that man had a right of property in his person; since Blackstone, who alongside of personal security and personal liberty included the right of property among the three absolute rights "inherent in every Englishman" since the first articles of the Virginia Bill of Rights of 1776, which pointed, as being the inherent right of man, "to enjoyment of life and liberty, with the means of acquiring and possessing property" and since the French declaration of the rights of man of 1789 described property "as an inviolable and sacred right." That character of sanctity and inviolability has now departed from the right of property. This is so not only because of the advent of states in which, not private property, but collective ownership of the principal means of production has become the pivot of the economic system. It is so far the reason that private property has tended increasingly to be regarded not only as a right but also as social function and duty." (See pages 67 and 68, the Report of the Land Revenue and Land Tenure Committee, Orissa).

(It may be noticed, in passing and as a matter of historical interest, that the notion of private property carrying with it the attribute of social function as then understood is not altogether foreign to Hindu jurisprudence, which determined the right of succession to property on the capacity for and duty to offer oblations, a notion which has been now completely forgotten though the laws of inheritance based thereon survive).

11. It is intelligible, that where acquisition is not of individual items of property for limited purposes as in the cases to which the Land Acquisition Act applies and to which the principles laid down in AIR 1939 98 (Privy Council) " would be applicable, but where the extinguishment of rights of private property and the vesting thereof in the state, in trust for the nation, is contemplated as a preliminary step in a large scale measure of economic reconstruction of the society too strict an insistence on what may be considered as inviolable attributes of "private property" under the highly capitalistic American social and economic system may be out of tune, under the different conditions of this nation in its present set up. In this context the following passage at page 299 of Vol. I of Selected Essays on Constitutional Law is instructive.

"It is coming to be better understood today than formerly that methods of thinking fostered by the Common Law supported by the capitalists and industrial leaders of the country and applied by conservative minded Judges, rather than

constitutional provisions, have given the peculiar trend to judicial review of legislation in United States."

That may be the reason why the fundamental rights provided for under Article 31 (1) and (2) are in the negative but elastic terms in which they have been couched. The guarantee contained in this fundamental right may well be taken to have been satisfied so long as the law authorising the acquisition provides for the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined and given, so long as the scheme of compensation which emerges therefrom results in compensation, and not negation thereof, having regard to all the circumstances of the contemplated compulsory acquisition. I venture to think that a law which satisfies these conditions is not to be struck down as unconstitutional unless the scheme of compensation can be said to be wholly illusory and therefore a fraud on the constitution. It must also be remembered in this connection that there has been an age-long controversy whether the interests which the Zamindars have got in their estates can at all be said to be any ownership of the land which is comprised in the estate. That is a question on which eminent authorities never differed, and it is sufficient only to refer to the weighty opinions of Justice Field in his book on "Land holding" and Mr. Forbes in his speech when introducing the Madras Estates Land Act in the year 1908 in the local Legislative Council, to show that, they along with a number of eminent predecessors of theirs, held the view that the Zamindar had not vested in him the ownership of the land, but only the right to collect the rents, and to obtain certain advantages therefrom which alone constitute his property. (The references to the view of Justice Field and Mr. Forbes are to be found in the report of the Madras Estates Land Act Committee called Prakasam Committee, Part I page 9 and pages 91 and 96). I mention this, not for the purpose of determining the validity of the scheme of compensation on that footing, but, to show that in considering whether a scheme of compensation not in accord with the alleged natural attributes of just compensation is equitable, it is relevant to bear in mind the nature of the right of property sought to be compulsorily acquired and the question whether it has acquired socially -- apart from legally -- such an unchallenged and inviolable character as to attract all the alleged natural attributes of just compensation. Whether or not the considerations above referred to relating to the modern shift in the concept of property and to the disputed character of the rights of the Zamindar as property in the lands of the Estate, are legally relevant on an examination of the question whether "compensation" in the case of zamindari abolition carries with it the alleged attributes of just compensation -- there can be no doubt that "compensation" cannot be understood as involving these attributes in those cases to which the terms of Articles 31(4) and 31A and the decision of the Supreme Court apply.

12. While considering this aspect, it is necessary to mention one specific argument relating to the manner of payment of the compensation provided in the Act which has been strenuously contended to be invalid and to vitiate the entire

scheme of the compensation and, therefore, to knock the bottom out of the Abolition Act. The provisions relating to the method & manner of payment of compensation are to be found in Chapter VI of the Act. The main provisions are as follows: u/s 38

"The compensation shall carry interest at the rate of 21/2 per cent per annum from the date of vesting to the date of payment."

Under Section 37(3). the compensation together with the interest shall be payable on and from the date of vesting in 30 annual equated instalments provided that it shall be competent for the State Government to make full payment of the compensation outstanding at any time prior to the completion of the period of 30 years specified above. It is urged that even apart from the question of adequacy of compensation this method of payment which virtually amounts to a forced loan of the compensation money to the State and the discharge thereof by annual instalments is one entirely opposed to the idea underlying compensation. It is pointed out that this, method of payment is really illusory in every case and it is said that the whole of it is a device to acquire the estate by paying to the proprietor annually a small portion of the income of that vary estate for a period of 30 years and for taking over the rest of the income for those thirty years and also of the whole of the income in perpetuity beyond 30 years, without any kind of compensation. It appears to me that these arguments are fallacious. If the law permitted inadequate compensation to be paid without challenge and if that compensation is to be paid in annual instalments spread over 30 years, the highest multiple of the annual income which is given as compensation being only 20, it is obvious that the payment of annual instalments of compensation in every case must be only a fraction of the income of each year. But on that account, it cannot be said that the rest of the income must be taken to have been confiscated or that there is any fraud upon the law.

Section 38 having in terms provided that the compensation is due from the date of vesting and shall carry interest till the assessed compensation is paid up, the said amount is actually "given" though not disbursed, on the very date of vesting. The objection, therefore, to the payment of instalments spread over 30 years is, in substance, an objection relating to "adequacy of compensation" having regard to its manner of payment. It may be that such a payment of the assessed compensation, not in its entirety at the time of taking possession of the estate without the consent of the dispossessed proprietor is not in consonance with the idea of "just compensation as hereinbefore urged. But if as I have already shown, the test of "just compensation" cannot be applied to this class of cases, the only possibility of serious comment that could be suggested on this aspect of the case is whether or not the manner of payment provided under Sections 37 and 38 of the Act in terms, amounts to a forced loan of the compensation money, and whether on that ground it is open to any objection on the ground of legislative incompetence. When we put this aspect to the Advocates concerned, we have not been shown any reason for thinking that even

if the provision is to be treated as a forced loan, the same is not permitted under the law or is beyond the State's legislative competence. The true view, however, to be taken of this matter appears to me to be not that the compensation must be taken to have been paid and taken back as a forced loan, but that the very method and manner of giving the compensation as provided by the Act involves the absence of actual payment of compensation, at the time when the compensation is assessed, but provides only for its payment by way of 30 annual instalments, the original amount itself carrying interest, and the State being under no obligation to pay the amount either in advance or on the very date when the notification is issued or when the compensation is assessed. In this context, the difference in the language of Section 299(2) of the Government of India Act, and Article 31(2) of the Constitution is significant. Section 299(2) required that the law authorising compulsory acquisition of land must provide for "payment of compensation of the property acquired and must either fix the amount of compensation or specify the principles on which and the manner in which it is to be determined, while Article 31(2) requires only that the law must provide for compensation "for" the property and must either "fix" the amount of compensation or specify the "principles" on which the compensation is to be determined and "given". Therefore while u/s 299(2) of the Government of India Act compensation must be assessed and "paid" which may well imply "cash" payment and payment at the time of making possession, the requirement of Article 31(2) is that there must be principles enacted for determination and "giving" of compensation. This shows very clearly that merely because the compensation assessed is not paid at once, but in instalments, it cannot be said to violate Article 31(2) or to be otherwise illegal. I am satisfied, therefore, that there is no substantial foundation for the above argument and am of the opinion that the provisions relating to the manner of payment thereof are all well within the law.

13. The argument, therefore, that the scheme of compensation provided in the Orissa Estates Abolition Act is illusory and is a fraud on the constitution and that, therefore, the Act in its entirety is void is without substance and must be rejected.

14. It would be convenient at this stage to notice another argument that has been put forward which, if accepted, might invalidate the whole Act. The said argument may appear to be somewhat out of the line, in the course of consideration of the objections to the provisions of the Act as such. Since, however, the point raised is one relating to the validity of the Act in its entirety, it is convenient to consider and dispose of it at this stage. This argument has been raised by Mr. D. V. N. Rao, Advocate for the petitioner in O. J. C. 25 and 23 of 1952. The point raised is that unless the State makes out positively, (1) that the Orissa Estates Abolition Act has been reserved by the Governor for the consideration of the President, (2) that the President has considered the provisions of the Act carefully and assented to the same, and (3) that there has been a formal declaration by the Governor of his reservation and by the

President of his assent, the Act must be taken not to be entitled to the protection of Article 31(4) and Article 31A of the Constitution. I cannot help saying, with respect that this argument is, entirely without substance and could not be seriously maintained. However, since it has been sought to be urged with some show of insistence, it has to be noticed. In support of the argument, Articles 200 and 201 of the Constitution have been referred which show the legal requirements in this behalf, when a Bill of the State Legislature is sent up to the President for his assent. Learned counsel also relied on the passage at page 37 of Craies on "Statute Law" to show that the fact of assent of the King having been given to a Parliamentary statute may be contested. No doubt, the passage referred to shows as follows:

"The consent of King, Lords and Commons being essential to constitute an Act of Parliament, any doubt as to the giving of this consent may be investigated by the Court, and this is the only question as to the validity of the Act which, under our constitution, the Courts may investigate."

15. It is clear, however, that this passage is applicable only when there is reasonable scope for doubting the existence of the King's assent. At the very same page 37 of the Craies on "Statute Law" there is lower down another passage which throws light on the modern practice in this respect. That passage is as follows:

"But it is practically certain that the Judges in the case of modern Acts, would decline to go behind the Parliament Roll or the Kings copies of Acts officially supplied, unless they receive official intimation from some branch of the Legislature that the necessary consents had not been given."

16. In the present case, there is absolutely no material before us on which any doubt can be felt so as to raise a case for the scrutiny of the factum of assent of the President to the present Act. Learned Advocate who raised this argument, anticipating this difficulty, has tiled two petitions, (1) for an order against the State Government and (2) for an order against the office of the President of India for the production of relevant documents in their respective custody to enable the Court to be satisfied "(i) that the Bill was submitted by the Governor of Orissa for the assent of the President of India; (ii) the order of the President granting the assent; and (iii) the declaration as to (1) and (2) above. These petitions are no more than an attempt to fish for material in the custody of the opposite party on the chance of discovering lacuna, if any, therefrom. If the learned Advocate had any reliable material before him to raise seriously this question of fact and to throw any reasonable doubt as to the factum of the President's assent, the Court might well entertain such applications and call upon the State to produce the necessary documents; but without any such material, it would be improper to encourage such applications.

17. In respect of this, as in respect of other enactments of the Indian Legislature, there is invariably a Gazette Notification published in the Act when it

becomes law, and such notifications specifically recite that the Act so published has received the assent of the Governor or the President as the case may be. In the present case, the Law Department Notification No. 1079 Legislative, dated 6-2-1952, which published the Act, stated as follows :

"In pursuance of Rule 99 of the Orissa Legislative Assembly Rules of Procedure and Conduct of Business, the following act of the Orissa Legislative Assembly having been assented to by the President on 23-1-1952, is hereby published for general information."

Under R. 99 of the Orissa Legislative Assembly Rules, when a bill has been passed by the Assembly and signed by the Speaker, the Secretary shall submit it to the Governor for his assent and if assented to by him or the President, it shall be published in the Orissa Gazette as an Act of the Orissa Legislative Assembly assented to by the Governor or the President as the case may be. u/s 35 of the Evidence Act, the statement made in the Gazetted Notification dated 6-2-1952, that the Orissa Estates Abolition Act, 1 of 1952, has been assented to by the President is proof of that fact. Further, in view of the normal presumption that all official acts are to be presumed to have been regularly done, it is also proof that the Bill was reserved by the Governor for the assent of the President, for, that is the only way in which an Act of the State Legislature goes up for the assent of the President as a perusal of Articles 200 and 201 of the Constitution shows. Therefore, the fact of reservation by the Governor and of assent by the President must be presumed in the issue of the above mentioned Gazetted Notification. There being nothing in the petitions filed as already stated, showing that there is any reason to doubt the existence of these facts, or to make out a case for the investigation of these facts by the Court, the applications asking us to call for the documents must be rejected.

18. It is, however, contended that even so, the declarations of such reservation by the Governor and of such assent by the President as required under Articles 200 and 201 are not made out and that there is no presumption as to the existence of any such declarations. This further contention appears to be based on misconception of what exactly is meant by "declaration" as used in Articles 200 and 201 of the Constitution. To elucidate what is meant by "declaration", it is desirable to compare Sections 75 and 76 of the Government of India Act, 1935 with the Articles 200 and 201 which correspond to the same. Sub-section (2) of Section 76, Government of India Act, shows that the Governor General merely "declares" that he assents to the Bill or withholds assent or that he reserves the Bill for signification of His Majesty's pleasure. It is specifically provided that the Bill so reserved shall not become an Act of the Provincial Legislature unless and until within 12 months from the date on which it was presented to the Governor, the Governor makes known by "public notification" that His Majesty has assented thereto. It will be seen, therefore, that the Legislative Procedure under the Government of India Act made a distinction between declaration of the assent of the Governor-General and the public

notification of the fact of His Majesty's assent having been given. This, itself, is clear to show that what is indicated by the word "declaration" is not anything by way of a public notification. A consideration of the ordinarily understood meaning of the word "derlaration" seems to indicate the same. To declare an assent is nothing more than an assertion by the President or the Governor as the case may be, that in fact he has so assented. It does not involve any idea that that assertion must be made with any publicity or any particular form. In the Law Lexicon published by the Madras Law Journal Society of which the author is Sri P. Ramanatha Aiyar, the word "declare" is shown to mean as "to state", "to assert". There is also the following note about the three words "Declare", "Publish" and "Proclaim".

Note : "The idea of making known is common to all these terms; this is simply the signification of "declare", but the other two include accessory ideas. The word "declare" does not express any particular mode or circumstance of making known, as is implied by the others; we may declare publicly or privately; We "publish" and "proclaim" only in a public manner. In "declaring" the leading idea is that of speaking out that which passes in the mind : in "publishing" the leading idea is that of making public or common; in "proclaiming" the leading idea" is that of crying aloud."

The learned author does not indicate, the authority on which he bases this acute analysis, but I have no doubt that this is the correct exposition of the idea underlying the word "declare". I would respectfully acknowledge my indebtedness and adopt that exposition as my own. I am satisfied that there is no substance in the argument put forward that unless the State positively proves as a fact (i) Reservation by the Governor; (ii) Assent by the President; and (iii) Declaration of each in the "sense of publication thereof, "the Act is invalid. The learned Advocate a]so attempted to argue that the assent of the President stands in the place of judicial consideration of the existence of thg public purpose and of the adequacy or the appropriateness of the principles relating to compensation as laid down in the Act and hence is a judicial Act, and that such assent is not valid unless the parties concerned have been given an opportunity io be heard. This, with respect to the Advocate, appears to me to be a fantastic argument, and is based on a mis-conreption of the President's function in this behalf. The President's assent is dearly a part of the Legislative process and is immune from the scrutiny of the Courts on any such ground This argument must also be rejected.

19. Hence the., first category of arguments impugning the validity of the Art in lis entirety must be rejected.

20. II. Coming now to the second main category of arguments addressed to us, viz., the challenge to the application of the Act as regards certain specific items comprised within the estate, such as, private lands, waste lands, forests, mines, minerals and buildings, the broad argument put forward is as follows:

21. Though the Supreme Court in its decision reported in *The State of Bihar Vs. Sir Kameshwar Singh*,¹ upheld the validity of the Abolition Acts, with which they were concerned, taken as a whole, on the ground that they were inspired by a public purpose, and that the scheme of compensation provided in those Acts, was not open to challenge, on the ground of inadequacy of compensation it does not follow that the compulsory acquisition of each part, can necessarily be supported on those grounds. It is urged that it is also a fundamental principle of the Law of Eminent Domain that the acquisition must be confined to the requirements of the purpose involved. It is urged that to the extent that the acquisition is, of items, not strictly limited to the original public purpose, the acquisition in respect of that excess, is invalid or that at any rate it must be independently supported with reference to other adequate public purpose and "just compensation". On this footing an attempt has been made before us to show that in respect of all above-mentioned items viz., private lands, waste lands, forests, mines, minerals and buildings, there is no public purpose for their acquisition and that the compensation provided for them is wholly illusory. In the course of this argument the initial question was canvassed before us as to whether or not having regard to the judgment of the Supreme Court, the requirement of public purpose in such cases is open to examination of Courts on the terms of Article 31(4). It appears to me, however, clear that the Supreme Court cannot be said to have finally decided that matter; clearly enough two of the learned Judges, the Chief Justice and S. R. Das, J. held that the requirement of the public purpose was not open to scrutiny in cases covered by Article 31(4); and equally "clearly two other learned Judges, Mahajan, J. and Chandrasekhara Aiyar, J. were of the opposite view. So far as Mukherjea, J. was concerned, his Lordship, as appears from page 278 of the report, proceeded on the assumption that the existence of public purpose was not open for inquiry. That, apparently, was also the inclination of his opinion, as may be found from his judgment in the case in -- *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*,² of the report, wherein his Lordship observed with reference to the requirement of public purpose as one of the limitations for compulsory acquisition of property prescribed under Article 31(2) of the Constitution. It would, therefore, seem to follow that this question cannot be said to have been finally decided by a clear majority view of the Supreme Court. It would, accordingly, be more convenient, for the present purpose, to proceed on the footing that the requirement of public purpose is open to the scrutiny of the Courts, and that as a fact, all the Judges of the Supreme Court in the case. in *The State of Bihar Vs. Sir Kameshwar Singh*,³ unanimously held that the Estates Abolition Acts taken as a whole are inspired by a public purpose. The question, however, raised before us is, that the same public purpose does not support the compulsory acquisition of each of the parts thereof and in particular of the above-mentioned items of property, within the estate. It is, therefore, urged that the question of any relevant public purpose to support the acquisition and the question of adequacy of compensation regarding these items are both open to further and independent examination. That question has now to be considered.

22. It appears to me, on a consideration of the judgment of the Supreme Court, that such further scrutiny as to the specific and individual parts, on a dissection thereof from the estate as such is not permissible. This matter has been dealt with in the judgment of S. R. Das, J. and that of Mahajan, J. The former learned Judge dealt with the admissibility of the inquiry in respect of the parts, so far as the requirement of public purpose is concerned. The latter, Justice Mahajan, dealt with it so far as the requirement of adequacy of compensation is concerned. At page 290 of the report in *The State of Bihar Vs. Sir Kameshwar Singh*, his Lordship S. R. Das, J. states as follows :

"Mr. P. R. Das then puts up a narrow argument. Assuming, says he, that there is in the Act a general public purpose for compulsory acquisition of zamindari tenures, there cannot conceivably be any public purpose in support of the Act in so far as it authorises the taking the arrears of rent or the taking away of the 4 to 12 1/2 per cent. of the gross assets on the spacious plea that the landlords must be supposed to spend that percentage of their gross income on works of benefit to the raiyats of estates and therefore that part of the Act is beyond the legislative competence of the Bihar Legislature, I regard this argument as unsound for more than one reason. In the first place, the existence of public purpose being, as I hold, a provision of Article 31(2), its absence, if any, in relation to arrears of rent, cannot by reason of Articles 31(4), 31A and 31B be made a ground for attack against the Act.

"Secondly, it is an entirely wrong approach, to pick out an item out of the scheme of land reforms and say that that item is not supported by public purpose. One may just as well say that there is no public purpose in the acquisition of forests, or of mines and particularly of undeveloped mines; for such, acquisition has no bearing on the scheme of agrarian reform in that it does not improve or affect the conditions of the tillers of the soil. This, I apprehend, is not the right way of looking at things. The proper approach is to take the scheme, as a whole and then examine whether the entire scheme of acquisition is for a public purpose."

His Lordship Mahajan, J. has dealt with this aspect of the matter in his judgment relating to the Uttar Pradesh Act at page 310 of the report wherein it is stated as follows :

"Great emphasis was laid on the circumstance that nothing was being paid for non-income-fetching property. It has, however, to be observed that these non-income-fetching properties are integral part of an estate as defined in Article 31A and it cannot be said, when payment of compensation is provided for on the basis of the net income of the whole of the estate, that the legislation is of a confiscatory character. Different considerations might have prevailed if the estate as a whole were not being acquired but different species of property were made the subject-matter of acquisition. Properties comprised in an estate may be income-fetching and non-income fetching. The value of these to the owner in the market may well be on the basis of income, and if the Act has laid down the

principle of payment of compensation on the foot of net income, it cannot be said that the legislation is outside the ambit of Entry No. 42 of List No. III."

The other learned Judges have not dealt with this argument, presumably because, it was either not seriously argued, nor considered serious enough. But the two passages above cited indicating the views of the two of the learned Judges that the requirements of public purpose or of proper compensation are not to be considered with reference to each item of the property comprised in the estate, but in respect of the acquisition of the estate taken as a whole, are clear and decisive. I must note that there is one passage in the judgment of Chandrasekhara Aiyar, J. which may appear to lend support for the view that the requirement of public purpose is to be judged with reference to each of the items of property in the estate to be acquired. His Lordship at page 295 says as follows :

"It is impossible to deny that the Act is inspired and dominated by a public purpose, but the question still remains whether the taking over of particular items can be said to be for a public purpose."

But it is to be remembered that his Lordship made these observations only with reference to the question relating to acquisition of arrears of rent which, as appears from his Lordship's judgment, he considered to be quite apart " from the acquisition of the estate as such. This appears from the last paragraph of page 425 (of 1952 S. C. J.) of the judgment wherein his Lordship refers to the two American cases in --"Long Island Water Supply Co. v. Brooklyn", (1897) 41 LEd. 1165 (1) and --"Cincinnati v. Louisville & N. R. Co", (1912) 56 LEd. 481 (J), and recognizes that what may be considered the natural consequences of the acquisition of the estate as a whole, that also is to be taken as supported by the same public purpose, that is to say if acquisition of the estate involves the taking over of any other item of property, the acquisition of that item also is to be taken as supported by the same public purpose. Having this in view, his Lordship says at the top of page 486 as follows :

"In the present case it is untenable to state that the taking over of arrears is the natural consequence of the acquisition of the estate."

It appears to me, therefore that the judgment of the Supreme Court may be taken to have decided that the same purpose which supports the acquisition of the estate taken as a whole will support the acquisition of every item involved in the abolition scheme, which is an integral part of the estate, or, is reasonably incidental to, or is the natural consequence of the main scheme of the acquisition itself. I find this view which I am inclined to take, as to the Supreme Court judgment, is also the view of the Madras High Court as appears from a certified copy of its judgment in the batch of "C. M. Ps. Nos. 8017 etc. of 1950(K)", which has been since furnished to us. If this view is correct, it is unnecessary to go elaborately into the question whether in respect of the various items above referred to, the requirement of public purpose and the requirement of just

compensation, are reasonably satisfied. But having regard to the very strenuous arguments addressed in this behalf, and in view of the fact that it is possible to suggest that the judgment of the Supreme Court, has not in terms, negatived any such contention, it is desirable to deal with the merits of the objections raised to the individual items.

23. The main ground on which it is urged that the acquisition of the above-mentioned items is not supportable on the same public purpose, which inspires the acquisition of the estate as a whole, is that the object of the abolition of the zamindari-tenure and the acquisition of zamindari, the elimination of intermediaries and the improvement of the lot of the actual tillers of the soil. On this assumption, it is argued that that consideration cannot at all be relevant in respect of waste-lands, forests, mines, minerals, and buildings as there can be no question of there being any intermediary interest in respect of these, between the cultivator and the State. This is also maintained in respect of private lands of the Zamin-dar, under cultivation of temporary tenants.

It is said, that he is not a mere intermediary as regards those lands, but that in law, he continues to be in direct possession through his temporary tenants. To strengthen this argument, the definition of the word "intermediary" as given in the Orissa Estates Abolition Act itself has been referred to. In the said Act, the word "intermediary" is defined in Clause (h) of Section 2 as follows:

" "Intermediary" with reference to any estate means, a proprietor, sub-proprietor, landlord, landholder, Malguzar, Thikadar, Goantia, tenure-holder, under-tenure-holder, and includes, the holder of inam estate, jagir, and mauffi-tenures and all other holders of interest in land between the raiyat and the state etc."

It is pointed out that the preamble to the Orissa Estates Abolition Act itself states that

"It is expedient to provide for the abolition of all the rights, title and interest in land of Intermediaries by whatever name known."

While it is true that the word "intermediary" as above defined includes "all other holders of all interest in land between the raiyat and the State" it does not follow that the word "intermediary" as defined, is confined only to such of the persons as occupy an intermediate position between the raiyat and the State or that in respect of lands or property in an Estate as regards which there is no raiyat, he does not hold them as an intermediary according to the above definition. It is to be noticed that the definition assigns to the word "intermediary" a primary meaning by specifying certain categories of persons whose connotation is well-defined under the various tenancy laws, viz., "proprietor", "sub-proprietor", "landlord", "land-holder", "Malguzar", Thikadar, "Goantia", "tenure-holder", "under-tenure-holder", and the further connotation "of the word "intermediary", is brought in by an expansive clause which commences with the phrase "and includes". The use of the phrase and includes" in the definition indicates only an

extension of the primary meaning. When a definition states that a particular term "means" some things "and includes" some other things it is not necessary to assume that the first and the second category have invariably any particular common characteristic though they often do have it. In the present case, from the definition of "intermediary" it does not follow that what is stated in the later clause is restrictive of what is stated in the earlier clause, nor is the phrase "all other holders of interest in land between the raiyat and the State" in the second clause, any indication of a common characteristic between both categories on the principle of "ejusdem generis". At best the phrase "all other holders of interest in land" can be taken to be "ejusdem generis" with the specified categories which "follow" the phrase "and includes" that is, "holders of an inam estate, Jagir, maufitenures". It appears to me, therefore, that it is a mistake to equate the word "intermediary" as defined, with a person who holds an intermediate status between the tiller and the State, though in a general way, it is so even as regards those specified in the first clause of the definition, or to confine that connotation only to such lands in respect of which such an intermediate position of the landholder obtains. Apart, however, from the alleged implication of the definition, the entire argument in this behalf, is advanced on the assumption that the purpose of the Abolition Acts is the elimination of intermediate tenures as such in respect of each, item of land. But it is quite clear that this assumption is erroneous and that the purpose which inspires the Orissa Estates Abolition Act is not confined to the abolition of intermediate interests or even of the interests of the intermediaries. The Preamble to the Act clearly states that in order to secure economic justice for all, it is necessary to prevent the concentration of wealth and means of production and to secure the control of all material resources of the community so that they may best subserve the common good. This is also virtually what is stated to be the purpose of the Abolition Acts in the judgment of his Lordship Mahajan J. at page 384 (bottom) in -- "1952 S C J 354" (B), wherein it has been stated as follows:

"The purpose of the acquisition contemplated by the impugned Act is to do away with the concentration of big plots of land and means of production in the hands of a few individuals and to so distribute the ownership and control of material resources which come in the hands of the State so as to subserve the common good as best as possible."

There can, therefore, be no doubt that the acquisition of waste lands, forests, mines and minerals and private lands are all of them as much inspired by the same public purpose, viz., prevention of concentration as the acquisition of cultivated lands in the estate in the occupation of tillers of the soil. I have no doubt, therefore, that there is clear and ample public purpose to support the acquisition of these other items of property in the estate which are in truth integral parts of the estate and must necessarily go with the estate when it is acquired. The only possible argument in this respect, if at all, may be, as regards the acquisition of buildings, which will be dealt with presently.

24. Another serious objection that has been raised in respect of these individual items is that the scheme of compensation adumbrated in the Abolition Act makes no kind of allowance at all so far as potential resources are concerned, and that, therefore, items of property with potential incomes are in effect, confiscated and not compensated. It is to be noticed that as regards mines and minerals, the Orissa Act provides for additional compensation as appears from Sections 28 and 30 of the Act and, therefore, this objection is not tenable so far as those items are concerned. But in respect of other items such as waste-lands, forests and private lands in the occupation of temporary tenants, it may, no doubt, be said that the potential resources do not enter into calculation for assessment of compensation. But the argument, in this behalf, has been adequately answered in the judgment of his Lordship Mahajan J. at page 310 of the report, as noticed already. But apart therefrom, it is permissible to suggest that, if the theory that the landholders and zamindars were primarily rent receivers entrusted with the responsibility of developing the potential resources of the State and given the privilege of enjoying the benefit of such resources, when actually developed, is tenable, it may well be said that the right which they had, was only the right to the actual income as augmented by the actual development of the potential resources and that the Zamindar's right was not in itself a right of property in those potential resources which required to be compensated as such. It is also relevant to notice in this connection, that at least so far as ex-Madras Zamindars are concerned the peishcush payable by them was determined only with reference to the actual income at the time of permanent settlement and exclusive of any potential income (see Prakasam's report, pages 36 to 44 in particular bottom of page 42). Therefore, even apart from the well-accepted notion that compensation fixed as a multiple of the actual income of the estate acquired, is a fair principle of compensation, it cannot be said, that if the Legislature took the view that potential resources of an estate of which the landlord was in a sense a trustee for development and not the owner, did not require to be compensated as such, on that ground, the acquisition of the estate taken as a whole ignoring the potential income of undeveloped resources cannot be said on that ground to result in confiscation of any item of property within the estate belonging to the Zamindar. I am, therefore, of the Opinion that the acquisition of the various items above referred to, which are comprised within the estate even if they are considered in their individual aspect, cannot be held to be invalid for lack of public purpose or on account of the absence of additional compensation for potential income or resources.

25. Out of the individual items referred to above, and apart from the general argument relating thereto above noticed various questions regarding two specific items, viz., private lands, and buildings, have been strenuously argued. The insistence on the arguments relating to these two items was apparently inspired by a feeling that gross injustice has been done to the zamindars as regards those items. It is, therefore, desirable to consider those arguments somewhat in detail to see whether that sense of grievance has any legal foundation.

26. I shall first deal with the questions raised as regards private lands. Cultivable lands within an estate are broadly divided, so far as the Madras Estates Land Act is concerned, into two categories, viz. raiyati lands and private lands, the distinction being that so far as the former are concerned, any tenant let into possession thereof is at once clothed with occupancy rights statutorily, by virtue of Section 6 of the Act, while as regards the latter no person let into cultivation thereof gets occupancy right except by a grant, express or implied, from the landholder. The result of this difference is that in respect of private lands, the landholder can either keep them under his Khas cultivation or let them out to temporary tenants without accrual of the right of occupancy, and that such tenants are subject to ejectment and enhancement of rent on contractual basis. The Abolition Act while enacting that the erstwhile occupancy raiyats of the landholder become, on abolition of the estate, the raiyats under the state itself, has also made certain provisions regarding (1) the lands in the Khas cultivation of the landholder and (2) private lands of the landholder in the cultivation of temporary tenants. So far as the former are concerned, Section 7(1), Clause (a) of the Abolition Act enacts the following:

"All lands used for agricultural, horticultural purposes which were in the khas possession of the Intermediary on the date of vesting, shall notwithstanding anything contained in the Act be deemed to be settled by the State Government with the Intermediary, and the Intermediary shall be entitled to retain possession thereof and hold such lands as raiyats under the State Government having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner."

27. But this privilege is not extended by the Abolition Act to the private lands of the landholder which are in the possession of temporary tenants. So far as such temporary tenants are concerned the result of Section 8 (1) of the Abolition Act is that he is transformed by the Abolition Act into a tenant of the State having the same rights and subject to the same restrictions and liabilities as immediately before the date of vesting. It is this result of the Abolition Act relating to private lands of the landholders that has come in for insistent argument. It may be mentioned, in passing, that even in respect of this class of lands where the Intermediary either as an Intermediary or in any other capacity, owns less than 33 acres of land in total extent, within the State, the Occupancy right in respect of those lands, is conferred on him, and not on the temporary tenant, after the abolition, by virtue of Section 7(1) (b). But, that presumably helps only small landholders and it does not appear that it helps any of the zamindar-landholders who are the applicants in these applications. There has been some argument before us as to the rationale and basis of this limitation of 33 acres and the various anomalies and illogical situations that arise with reference to this provision have been referred to. We are not, however, concerned, on these applications, with any of those considerations. But it may as well be noticed that while such a limit is not known under the Madras system of land tenures, it appears to be a well-known distinction in the Bengal and Orissa

system of land tenures, see Section 5 (5), Orissa Tenancy Act, which says that

"Where the area held by a tenant exceeds 33 acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown."

However that may be the question raised, as regards these private lands, is that, notwithstanding the fact the landholder may have let it out to a temporary tenant, he is the full owner of these items of property and that the scheme of acquisition and compensation, in so far as it extends to such lands, ignores such special rights of the landholder in these lands. To illustrate this point, we have been invited to compare the corresponding provisions of the Abolition Acts of Madras, Bihar, Madhya Pra-desh and Uttar Pradesh. Section 12-A, Madras Estates Abolition Act, 26 of 1948, Section 6, Bihar Act, 30 of 1950, Section 4(2) Madhya Pradesh Act 1 of 1951, and some of the detailed provisions contained in Section 10 and Section 18-A, Uttar Pradesh Act of 1950, do certainly show that under those Acts a landholder is not completely deprived, on abolition of his estate, of rights in respect of his private lands, which at the date of the abolition, happened to be in the possession of temporary tenants. The Madras Act and the Bihar Act vest the raiyati interests in respect of those lands also in the landholder making the actual cultivators under-tenants. While this comparison, no doubt, emphasizes the apparent grievance of the landholders in this respect, it does not help to elucidate any legal position on which such grievance can be founded. One of the arguments in this behalf that has been advanced, is that in depriving the landholder of his rights in respect of private lands under the occupation of temporary tenants, the Abolition Act has done nothing more than to take away the property from him and to give it to the temporary tenant. The cases in *Bankey Singh and Others Vs. Jhingan Singh and Others*, and that in -- "*Central Pacific R. R. Co. v. Gallatin*", (1879) 99 U S 727: 25 LEd 504 at p. 508 (M) are cited to show that a legislative enactment to pass one man's property to another is not valid in the exercise of the right of Eminent Domain. This argument, however, is based on the wrong assumption that the effect of the Abolition Act is to take the occupancy right in the land from the landholder and vest it in the temporary tenant. That certainly is not the direct effect of Section 8(1) of the Abolition Act which merely transforms the temporary tenant of the private land into a temporary tenant of the State, It may be that the State may thereafter, as a matter of State policy, confer on him the occupancy right, but that is not relevant for the present discussion.

28. It has next been contended that in any case, a private land in the possession of a temporary tenant, is still legally in the possession of the land-holder himself and that he is not divested thereby of his full proprietary right in the estate which consists of both the Malevaram, and Kudiravaram interests (proprietor's interest and the raiyat's interest) in the land; and that what has been done in respect of those lands is a complete confiscation of the Kudiravaram interest without any compensation. To substantiate the argument that in respect of the compulsory acquisition of these private lands under the occupation of temporary

tenants the mere inclusion of the rent that is actually paid in the previous year by the temporary tenant within the gross assets to be determined u/s 27 of the Abolition Act, is not in any sense a rational principle of compensation as regards such lands, an attempt has been made to show that in Land Acquisition cases, the Kudivaram interest has normally been assessed at twice the Malevaram interest and that the apportionment of the total compensation money is made accordingly, as appears from the case in -- F.G. Natesa Aiyar and Others Vs. Kaja Maruf Sahib, and -- "Gajapatiraju v. Annapurnamma Garu", AIR 1941 Mad 660 (O). The case in -- "Kondayya Rao v. Naganna", AIR 1941 Mad 367 (FB) (P) has also been cited to show that the Kudivaram interest of the land-holder in his private lands is one that continues to be vested in him, notwithstanding that the land is in the possession of a temporary tenant, and that it is capable of independent sale. These citations are meant to show that compensation based on the rent received from the temporary tenant is nothing more than the compensation for the Malevaram. It is further pointed out that by virtue of the Orissa Tenants Protection Act of the year 1948, which is a temporary Act, the land-holder has been deprived of his right to get a competitive contractual rent and the rent payable, has been limited to 2/5ths of the gross produce in such cases, by virtue of Section 6(b). It is, therefore, urged that to take that rent as the basis for compensation is unfair, if not illegal. However hard the case of the landholder might appear to be, with reference to the provisions of the Abolition Act, as regards the private lands in the possession of temporary tenants, none of the above considerations can be considered as anything more than argument relating to inadequacy of compensation, and not as arguments which lead to a conclusion that there has been any confiscation of a particular interest in land without any real or rational principle of compensation. In the first place, as already previously shown, in a scheme of acquisition of the estate as a whole, it is erroneous to pick out an individual item and attempt to judge whether there has been any rational compensation in respect of that item. The principle of compensation adopted for the entire estate (whose rationality has not been challenged as such) being the principle of a multiple of the gross assets which include the actual income payable in respect of each item of land so far as lands under cultivation are concerned. If the application of that principle to individual items results in producing a total aggregate sum which is less than what it might otherwise be, it is only a question of adequacy of compensation and not the absence of any rational compensation. But even if it were permissible to consider the question of compensation separately for private lands as such, it cannot be said that there has been confiscation of any particular severable interest of the landholder which require? to be compensated and in respect of which there has been no compensation at all. The division of the interests of the land-holder in his private lands into Malevaram and Kudivaram, is merely notional. When a private land is acquired, it is the land as such that is acquired and not any particular interest thereof. It would, thereof, be an extremely artificial view to take that when compensation is paid for the private land on the basis of the rent actually realised, it is anything more than inadequate compensation at best. It

must also be remembered that under the Orissa Tenants Protection Act, the landholder under the Madras Estates Land Act, in cases where the rent is payable in kind, gets only 1/6th of the gross produce as rent from the occupancy-raiyat of raiyati land, while he gets 2/5ths of the gross produce as rent from a temporary tenant of private land. Therefore in calculation of compensation, the compensation relatable to raiyati land is based on 1/6th of gross produce and that in respect of private land it is based on 2/5ths of the gross produce. It cannot, therefore, be said that the principle of compensation adopted completely ignores the distinction in the rights of the landholder in respect of private lands and raiyati-lands. That distinction has been recognized in the Orissa Tenants Protection Act itself by provision of differential rents and is, to that extent, carried into the scheme of compensation for the two different categories of land. While no doubt I have dealt with this matter at some length, the true view to be taken in cases of this kind, appears to me to be "not" that any particular interest of the land-holder is taken away from and has to be compensated as such, but that under the Orissa Tenants Protection Act, the contractual relationship between the land-holder and his temporary tenant in respect of private lands, has been statutorily altered by preventing ejectment and fixing the rent. This Act was no doubt temporary and Section 15 of the Act in terms declares that the Act confers no additional right on any tenant but that on expiry of the Act such tenant shall possess the same right what he would have possessed if the Act had not been passed. But the temporary Act has continued to be in force up-to-date. While the statutory protection has continued, though it may be that the temporary tenant is not the Kudivarmdar, it is equally arguable that the land-holder has not the complete Kudivaram right vested in him. At best it is a case of Kudivaram right having been kept in statutory abeyance. Therefore, what all can be said is that the future or prospective reversion of Kudivaram interest has not been compensated. In this situation, if the Legislature intervenes, no question of confiscation of the notional and future Kudivaram interest of the land-holder arises, but the legislation must be treated as one regulating the relationship of the land-holder and the temporary tenant. That this is the correct way of looking at a situation of the kind, appears from the cases in -- AIR 1943 29 (Federal Court) ; -- AIR 1946 127 (Privy Council) and the rent case of the Madras High Court in -- "Ram Krishna Ranga Rao Bahadur v. State of Madras", AIR 1952 Mad 203 (S) relating to Madras Estates Land (Reduction) Rent Act, 30 of 1947. Though no doubt those cases relate to raiyati lands, there appears to me no difference in principle, On all the above grounds, I consider that there is no substance in the argument that the scheme of compensation considered with reference to private land under the occupation of temporary tenants is a scheme which results in confiscation of a separate and severable interest in the private lands and that on that ground, the acquisition in respect of private lands is invalid.

29. An unsubstantial and feeble attempt has been made by some of the Advocates who appeared on behalf of the zamindars to show that private lands

do not form an integral part of the estate as defined in the Madras Estates Land Act and that, therefore, they cannot be treated as an integral part of the scheme of abolition of the zamindaries; it is urged, therefore, that even if the acquisition of such lands is considered as incidental to the acquisition of the estates, the same would not be protected under Article 31A of the Constitution, since they do not form part of the estate and that, therefore, their acquisition would be hit by Article 14 of the Constitution, as held by the Patna High Court in respect of the Bihar Act. This argument is without any substance and is based on a fundamental misconception that private lands are not part of an estate. A perusal of the definition of the word "private land" taken with the definition of the word "raiyati-land" and the word "estate" can leave no room for any reasonable doubt as to the fact that private lands are part of the estate. Indeed if they were not so, it would be difficult to see on what other title the Zamindar holds the private lands in his Zamindari. Section 4 of Regulation 25 of 1802 under which the Madras Zamindaries were settled and the Sanads issued to the Zamindars under that Regulation, a form of which is printed in the Board's Standing Orders, Vol. I, Appendix 34, page 264, shows what all items were included in, and what were excluded from the scope of the permanent settlement of the estates. Clearly enough, private lands are not within the excluded categories. The only foundation for this very unsubstantial argument is the stray statement of one of the learned Judges in -- "Nagayasami v. Yiramasami", 7 Mad HCR 53 at page 80 (T), as also a possible speculation that the notional income from the private lands was probably not included in the assets of the zamindari for the purpose of calculation of peishkush. What exactly the passage in "7 MH C R 53 at p. 80 (T)" relied upon was meant to convey, has been explained in the case in -- "Periannan v. Sundaranayagi Amman", AIR 1952 Mad 323 (FB) (U) (see pages 328, 329 and 330 of the judgment). That decision also shows that notwithstanding the doubt as to whether the notional rents of private lands were included in the assets of the zamindari for fixation of peishkush in the case of every zamindari, it is quite clear that the private lands, along with other raiyati-lands, were liable for payment of peishkush in the estate and they were treated throughout as part of the permanent settlement. This case as well as the case in Chelikani Kondayya Rao and Others Vs. Uppalapati Naganna and Others, " definitely proceeded on the footing that private lands are part of the estate and that is also the presumption of Panigrahi, J. in the case reported in -- Puro Goudo and Others Vs. Sri Uday Pratap Singh Deo, . This contention, therefore, is without any merit.

30. There is another point relating to private lands which requires notice. Our attention has been drawn to the fact that in respect of the provisions of the Act relating to private lands of the landlord in the possession of temporary tenants, there is a difference" between what was contained in the Bill when it was introduced in the Legislative Assembly on 17-1-1950, and the Act as finally passed. The provisions in the Bill relating to this are to be found in Section 6 thereof, while in the Act as finally passed, these provisions are to be found in

Section 7. Section 6(1) of the Bill, in so far as it is relevant for the present purpose, says that on and from the date of vesting, all lands used for agricultural and horticultural purposes, which were in the "Khas possession" of the Intermediary on the date of such vesting, shall notwithstanding any contract or agreement to the contrary, or anything contained in the Act, be deemed to be settled by the Province with such Intermediary, and that such Intermediary shall be entitled to retain possession thereof & hold them as a raiyat under the Province, having occupancy rights in respect of such lands subject to the payment of such fair & equitable rent as may be determined by the Collector in the prescribed manner. It appears, however, that by Clause (a) of Sub-section (1) of Section 6, lands used for agricultural or horticultural purposes and held under the direct possession of a temporary lessee- of the estate "and" lands cultivated by the Intermediary himself with his own stock or by his own servants, or with hired labour, or with hired stock, are all equally treated as being "lands in the khas possession" referred to in Sub-section (1). It would, therefore, follow that both classes of lands that is, those cultivated by hired stock and those in the direct possession of temporary tenants, are intended to remain with the landlord on the footing of his becoming an occupancy raiyat thereof on abolition. But there is also a proviso in Section 6 which is as follows:

"Provided that lands known as Nijot, Nijchas, Sir, Bhogra, Hetta, or lands which once having been raiyati, have been acquired by the Intermediary and are not in his Khas possession on the date of the introduction of the Bill, shall vest in the Province and may be settled with tenants in the manner and on the terms and conditions as may be prescribed."

This proviso has apparently the effect of taking away the lands of the above specified categories from the operation of the main provision in Section 6 of the Bill and such lands, if in the occupation of temporary tenants, would be deemed to be settled with the landlord on raiyati-tenure, only if the State chooses not to settle such lands with the temporary tenants themselves. Now as against these provisions in the Bill, the corresponding provision in Section 7 of the Abolition Act, as already stated, is that only the lands in the actual Khas possession of the Intermediary on the date of vesting, remain with him and are deemed to be settled with him as a raiyat under the State, while all lands held by temporary lessees are deemed to be settled with those temporary tenants, excepting where the Intermediary owns less than 33 acres in which case he is deemed to be a raiyat of the State. The difference, therefore, between the Bill and the Act so far as private lands in an Estate are concerned (which are generally known also by the term "Hetta lands" in the estates in South Orissa with which we are concerned in these applications) is that while the Bill leaves it to the discretion of the State, as to whether such lands are to be given over on raiyati-tenure to zamindar or settled on raiyati-tenure with the temporary tenants, the Act does away with this discretionary treatment of such lands and provides that in the case of land-holders owning 33 acres, he will become a raiyat in respect of such lands (the temporary tenants becoming under-tenants); while in respect of land-

holders who own larger extents the land-holder gets no advantage at all after abolition from his private land under the occupation of temporary tenants. It is difficult to say whether this change can be taken to have affected adversely the land-holders to whom, the Abolition Act applies. In one sense, what was an unlimited discretion vested in the State Government under the Bill, has been altered into a definite provision giving some benefit to the smaller landholders owning less than 33 acres, while excluding the bigger land-holders from any benefit in respect of private lands in the occupation of temporary tenants, and this may, therefore, have been a real benefit. At any rate it is not possible to say that taken as a whole for the State of Orissa, the change must necessarily be taken to have been adverse" to the landlords. Indeed in the North Orissa area where there are quite a larger number of small landlords, this change might be a great advantage to them. But in South Orissa where the land-holders hold Zamindaries under permanent settlement and who are generally big landlords this provision may have been to their disadvantage. I am unable to see, however, that the fact that there has been a change in the relevant provision from the stage of the Bill to the stage when it became an Act, can have any bearing on the validity of the Act as regards these private lands. All the difference that it makes is as to the protection available under Article 31(4). But since the private lands, as pointed out, are an integral part of an estate as such, the law relating to the acquisition and abolition of such estates is protected by Article 31(4), when the Bill was introduced into the Legislature before the commencement of the Constitution and has received the President's assent. As has been already pointed out the considerations of constitutional validity apply in this case to the Act as a whole and are not to be applied to individual parts of the estate. That protection of Article 31(4) must, in the very nature of things, extend to the entire Act notwithstanding that the Bill may have undergone some later changes in some portions thereof. I can see no reason for thinking that the protection is limited only to the Bill as it stood and that Article 31(4) must be construed so as to exclude any normal amendments which a Bill would ordinarily undergo in the course of its passage through the Legislature. It may be different if in the course of that passage the structure of the Bill itself in any of its essential features has been totally altered, for instance, where the very basis of the scheme of compensation is changed or if something alien to the original scheme of acquisition and abolition and which is not an integral part thereof has been included therein, so as to constitute the Act when passed, a combination of the original Act and another Act put into one for the purpose of convenience. I am, therefore, inclined to think that the fact that there has been some change between introduction of the Bill and the passage of the Act, as regards the provisions relating to private lands, is of any material consequence in this case. On the whole, therefore, there is no legal foundation for the grievance felt by the applicants on account of the differential treatment given to the private lands under their Khas possession and private lands under the cultivation of temporary tenants.

31. I must add that in the above discussion as regards private lands, I have confined myself to reference to the Madras Estates Land Act and the considerations arising thereunder because all the estates which are the subject-matter of these applications are governed by that Act. But it will be found that similar though not identical provisions are in the Orissa Tenancy Act and probably in the Central Provinces Tenancy Act.

32. I shall next take up the objections raised as regards the acquisition of buildings in the Estates. The scheme of the Act as regards the buildings of the intermediary situated on lands which are comprised within an Estate is to be gathered from Clauses (a) and (i) of Section 5, Sub-sections (1), (2) and (3) of Section 6, taken with Clause (i) of Section 2, and Clause (iii) of Sub-section (2) of Section 26 taken with Clause (d) of Sub-section (1) of Section 27, and also Section 28. Of these, Sections 26, 27 and 28 relate to the assessment of compensation and the others relate to the determination of the question as to which buildings are to be taken over by the State and which are to be left to the Intermediary. The provisions relating to this last matter are in some respects rather vaguely expressed and are not easy to be classified into mutually exclusive and clear-cut, categories. But broadly stated they are as follows:

1. Buildings used primarily as office or Kut-chery for the administration of the Estate (Section 2 (i)), or for collection of rent of such Estate or as rest houses for Estate servants on duty or as golas for storing rent in kind or part thereof (Section 5(i) and Section 6 (1)). These will hereinafter be referred to as office and Estate buildings for convenience.

2. Dwelling houses used by an intermediary for the purposes of his own residence or for the purpose of letting out on rent together with any court-yard, compound, garden, orchard and out-buildings attached thereto and including any tank, library, and place of worship appertaining to such building (Section 2(i)). These will hereinafter be referred to as "homesteads" for convenience (though I am conscious that "homestead" as refined in the Act excludes certain office buildings).

3. Buildings used as golas, factories, or mills for the purpose of trade, manufacture, or commerce or used for storing grains or keeping cattle or implements for the purpose of agriculture. These will be hereinafter called "personal buildings" for convenience (Section 6(1)).

33. The general scheme of the Act is to leave to the intermediary, buildings of categories (2) and (3) on the footing of his being a tenant of the State in respect of the site thereof and on payment of fair and equitable ground rent (to be determined), while taking over for the state the buildings in category (1) with the sites on which they stand on paying compensation therefore as provided in Sections 26, 27 and 28.

34. It is somewhat noteworthy that there is no categorical provision in this Act as in some other similar Acts that all office and estate buildings in the possession of

the intermediary by the date of notification vest in the State. But that is the obvious result of Section 5 (a) in so far as it relates to such buildings when taken with the saving provisions of Section 6, and is also the clear implication of Section 26(2)(iii) and Section 27(l)(d) relating to compensation therefor. The result, however, of Section 6(1) taken with the definition of the word "homestead" in Section 2(i) and with Section 6(3) appears to be that, "in addition", the following buildings also purport to be vested in the Government: (1) Buildings which may otherwise be homesteads, but which have been used primarily as office or kutchery for the administration of the estate on and from 1-1-46 and presumably up to the date of the issue of the notification. (2) Personal buildings constructed before 1-1-46 but not in the possession of the intermediary by the date of commencement of the Act, i.e., 23-1-51. (3) Personal buildings constructed after 1-1-46, and used as such and in the possession of the intermediary, but in respect of which the Collector, after enquiry, is of opinion that such construction or use is not bona fide. Strong objection is taken to the compulsory acquisition of all these buildings, and in particular, with reference to the buildings of the category (1), (2) and (3) enumerated above.

35. The substantial point urged before us in respect of this part of the case is that in law buildings are not necessarily part of the estate, merely because they are constructed by the intermediary on sites which are part of the estate; and that, therefore, all the provisions of the Act relating to the vesting of the buildings in an estate which proceed on a wrong assumption of law that the buildings are part of the estate are invalid. It is further argued that if the buildings taken over by the State are treated to have been taken over not necessarily because they are part of the estate, but because their taking over is incidental to the acquisition of the estate, the protection of Article 31(4) and Article 31A of the Constitution does not apply to them; and that hence the requirement of public purpose as well as the justness of the compensation provided, and the objection by way of discriminatory treatment offending Article 14 are all matters that would require independent consideration.

36. As regards the first of these contentions, the Privy Council case in -- AIR 1927 135 (Privy Council) is strongly relied on. In that case, the Judicial Committee laid down that:

"In India there is no absolute rule of law that whatever is affixed or built on the soil, becomes part of it and is subjected to the same rights of property as the soil itself."

In so laying down, their Lordships followed the dictum of a Full Bench of five Judges in --"Thakoor Chunder v. Ramdhone", 6 W R 228 (X), which is as follows:

"According to the usages and customs of this country, buildings and other such improvements made on land do not by the mere accident of their attachment to the soil, become the property of the owner of the soil; and if we think it should be laid down as a general rule that, if he who makes the improvement is not a

mere trespasser, but is in possession under any bona fide title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was, before the improvement was made or to obtain compensation for the value of the buildings if it is allowed to remain for the benefit of the owner of the soil the option of taking the buildings or allowing the removal of the material, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he may possess."

37. This view has been followed in -- Jogendranath Das Vs. Damodardas Khanna, ; -- Umrao Singh Vs. Kacheru Singh and Others, and -- AIR 1949 121 (Federal Court) all of which recognize that the maxim of the English law, viz., "qui quid plantatur solo solo cedit" has no application in India, The definition of the words "estate" and "lands" in the Bengal Estates Partition Act of 1879, shows that an "estate" means all lands comprised in it and that the word "land" does not include houses or other buildings standing thereon. It is true that these definitions do not apply to the ex-Madras area of the Orissa State. It may also be noticed that u/s 2, Madras Revenue Recovery Act, 2 of 1864, the land, the "buildings" upon it and its products, are regarded as security for public revenue of an estate which may imply that for revenue purposes the buildings are treated as part of the estate. But since there is also personal liability for arrear of revenue, this is not decisive. These considerations, therefore, do not seem to affect the general proposition as laid down by the Privy Council in AIR 1927 135 (Privy Council) " followed by the Federal Court in AIR 1949 121 (Federal Court) ". It is argued, however, on behalf of the State, that whatever may be the general law, the buildings which are constructed and used as office or estate buildings, must, by the very reason of their construction and use, become part of the estate. On the other hand, learned counsel for the petitioner urges that if the general law is as above stated, a building when constructed and for whatever use put, will remain in the separate ownership of the builder and that it does not become part of the estate unless incorporated with it. It is urged that while the use for office purposes, may be one of the relevant items of evidence to prove such incorporation, what really requires to be found is a clear and unequivocal intention to incorporate the building as part of the estate and the fact of such incorporation, and not the mere use of it. There appears to be some force in this argument. Irrespective, however, of the correctness of the argument in this behalf, and notwithstanding the existence, if any, of a rule of common law that a buliding is to be treated as part of the estate only, on proof of incorporation, it appears to me that there is no impediment to the State Legislature providing as part of the Estates Abolition Scheme that all buildings within the ambit of the estate and primarily used for office and estate purposes, and in the possession of the intermediary, as such, by the date of vesting, should be treated as appurtenances to the Estate and vest in the State as such, along with the sites on which they stand. This, to my mind, is the effect of relevant provisions of the Act, viz., Section 5(a) "taken with Section 6(1), and Sections 26(2) (iii) and 27 (I) (d). Section 5(a) no doubt vests buildings in the State as a consequence of the

vesting of the estate and enumerates buildings in the items enumerated in the phrase "the entire estate including" etc. In this enumeration, there is nothing wrong in including appurtenant interests, though they may not be, in strict legal theory, parts of the estate. In this view, the vesting provision operates only as regards such of the buildings, which can be called primarily office and estate buildings, and hence legitimately appurtenances of the estate, and is not applicable to any other class of buildings. This conclusion finds support from the fact that compensation is provided for such buildings in Section 26(2) and Section 27(1)(d) of the Act.

38. In this context, it is relevant to notice the analogous provisions in the Estates Abolition Acts of other States. Sections 4, 5 and 7 of the Bihar Act, 30 of 1950, show that all office buildings vest in the State and homesteads and personal buildings continue to be vested in the Intermediary, but as "tenant of the State. Section 18(1) of the Madras Act, 26 of 1948, shows that every building situated within the limits of an estate, which immediately before the notified date, belonged to any landholder thereof, and was then being used by him as office in connection with its administration, and for no other purpose, shall vest in the Government, free from all encumbrances, with effect from and on the notified date. The Madhya Pradesh and Uttar Pradesh Acts do not appear to contain any clear provision relating to office buildings, so far as I could gather. The fact, however, that in the Bihar Act and in the Madras Act office buildings have been treated as appurtenant to the estate and declared to have been vested in the State on the issue of the notification and the further fact that they have so far remained unchallenged in Courts, though not decisive, is not without relevance. It has been urged, however, that even if office and estate buildings may be said to have been compulsorily acquired for the State, by the provisions of the Act hereinbefore noticed, such buildings being in strict law not part of the estate, the objection as to the requirement of public purpose and just compensation as also the objection arising with reference to Article 14 of the Constitution, would still remain.

39. As regards the public purpose, even if the question be open to challenge, it appears to me clear that the same public purpose, which would support the acquisition of the estate, would support the compulsory acquisition of all office and estate buildings, which are incidental to such acquisition and necessary for the administration of such estates. The mere fact that in respect of buildings no principle of agrarian reform as such is applicable, is not pertinent, for, the acquisition of the estates, without the buildings reasonably required for the management and administration thereof, would hamper the administration, on and after the acquisition.

40. As regards the argument relating to absence of just compensation in respect of the buildings, the following cases have been cited in support of the argument that a mere capitalised annual rental value is not a proper or valid principle of compensation for buildings. It is unnecessary to deal with this aspect, which has

already been in a way dealt with in the earlier part of this judgment, when dealing with private lands. It is clear that the objection, if any, on his ground would be amply protected by Article 31(4) of the Constitution. What further is urged, however, is that the process of clubbing the annual rental value of the buildings as part of the gross assets of the estate and making the slab system applicable to the aggregate of the gross assets and not to the annual rental value of each building as such, and without providing for separate additional compensation in respect of buildings, as has been done in respect of mines and minerals, results in an, extraordinarily arbitrary and discriminatory compensation for the buildings taken over. It is, therefore, urged that the acquisition in this behalf, is open to the objection of violation of Article 14 of the Constitution, and that the same is not protected by Article 31A. The answer, however, to this objection appears to me to be that once the acquisition of office and estate buildings is taken as ancillary to and necessary for the acquisition of the estates themselves, and hence an integral part of the scheme, even though the buildings may not, in a strict sense, be part of the estate, but only appurtenances thereof, their acquisition is protected under Article 31A against any attack based on Article 14 of the Constitution. Article 31A appears to me to protect not only that portion of the Estates Abolition Act which contains provisions relating to the Tenancy Law of the State, but also the other provisions thereof which are integrally connected with the scheme of acquisition. What is protected under Article 31A is "the law relating to the acquisition of the estates" that is, every part of that law which is reasonably connected with it as part of the same scheme of acquisition.

41. There is also another important consideration why these portions of the Abolition. Act, relating to acquisition of office buildings and compensation payable, therefore, may well be treated as an integral part of the law relating to the acquisition of estates. If the compulsory acquisition of office buildings irrespective of evidence of incorporation had not been provided for under the. Estates Abolition Act, the legal position would have been quite anomalous. The lands in the Estate having vested in the State (and hence the sites of all the buildings), what all the dispossessed proprietors might have been legally entitled to, is to demolish the structures, and to take away the building materials within a reasonable time; but that right of getting demolition value cannot help them much. It is also obvious that it would have been extremely inconvenient to allow the office buildings to continue in the possession of the dispossessed proprietors, while the sites thereof belonged to the State. The anomaly of this situation shows clearly that the acquisition of office buildings as an integral part of the scheme of the estates -acquisition, is well protected with reference to same considerations and under the same constitutional provisions which apply to the acquisition of the estate itself. It may be recalled that in the judgment of the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, ", relating to Bihar Act, his Lordship Cljandra Sekhar Aiyar, J. relying on the two American cases in " (1912) 223 U. S 390(J)" and (1897) 166 U S 685 (I)", pointed out

that these cases recognize the principle that the validity of the acquisition of certain property extends to other rights of property which can be called the natural and necessary consequence thereof. I have, therefore, no doubt that in view of the above considerations the acquisition of the buildings within an estate, in so far as it relates to all the buildings used primarily as office and estate buildings and in the possession of the intermediary by the date of the notification is, *prima facie*, valid and not open to any constitutional objections.

42. So far as the objections raised to the compulsory acquisition of the other three categories of buildings, i.e., buildings not primarily office estate buildings, but falling within the categories of : (1) Homesteads or other personal buildings used as office buildings since 1-1-1946; (2) Personal buildings constructed before 1-1-46 and belonging to the intermediary, but not in his possession by the date of commencement of the Act, and (3) Personal buildings constructed and used as such after 1-1-1946, but held not to be *bona fide* by the Collector, a plausible question has been raised as to how far they can be treated as appurtenant to the estate and whether it is not in excess of requirements and hence invalid. But it is not necessary to consider the same in these proceedings, and we leave it open.

43. III. I shall next take up for consideration the third category of arguments according to the classification indicated by me at the outset of this judgment, viz., the challenge to certain individual provisions of the Act and to certain individual items bearing on the question of compensation. The main points that have been raised under this head, relate to the Agricultural Income Tax Amendment Act 1950, and the Madras Estates Land (Orissa Second Amendment) Act of 1946. Before dealing with these two larger questions, a number of minor points which have been raised, may be noticed.

44. Objection has been taken that, in respect of lands in the Estate held by the tenants on service tenure, no compensation has been provided. It has been pointed out that in the calculation of gross assets of the estate under S 26(2) only rents payable by the tenants are included, and that the word, "rent" as defined either in the Madras Estates Land Act in Section 3, Clause (ii) thereof, or in Section 3, Clause (16) of the Orissa Tenancy Act, refers only to what is payable in cash or in kind. It is also pointed out that under the general law "service" is also rent. (See Transfer of Property Act, Section 105, 2nd paragraph), and that the estimated value of such services is really the rent payable in respect of such lands which should have been included for compensation. u/s 8(3), Estates Abolition Act, service lands become vested in the state, and are deemed to be settled with the service-holder discharged from service. It is, therefore, said that these lands are taken away without providing any compensation therefor. It appears to me that this argument is based on misconception. It is true that the word "rent" as defined in the Tenancy Acts does not include "service" and that therefore the rents referred to in Section 26 (2), do not include value of services, but only the small favourable rent, if any, that is payable therefor. But there is no

reason to think that the estimated value of the services is not also intended to be brought into the calculation of the gross assets in such cases. Item No. (6) of Clause (b) Sub-section (2) of Section 26 is as follows :

"Gross income of the previous agricultural year from any other interest appearing to an estate vesting in the State Government, and not expressly mentioned in Sub-clause (i) to (e),"

The notional money value of the services rendered by tenants holding on service tenure is sufficiently covered by this residuary item and it is open to the compensation officer to include the value of the services in the gross assets under this head. Viewed in this light, there is no scope for the objection raised. It must, however, be mentioned that this relates only to what may be called lands held by tenants on personal service to the intermediary and not on Estate service. So far as the latter are concerned, no additional amount by way of notional rent need enter into the calculation, because, such notional amount bears the double character of rent payable by the tenant and the remuneration payable by the intermediary for the estate services, and they cancel out each other in any calculation of the net income from the estate.

45. The next objection that has been mentioned is that arising from Clause (5) of Sub-section (2) of Section 26 relating to the calculation of the income from the forests as an item in the gross assets. Objection is taken to the provision that the gross income is to be appraised by an officer and is not taken as the actual average income of a number of previous years. This, however, is not an objection that goes to the fairness of it. In view of the fact that an appeal to the Board of Revenue is provided, it cannot be assumed that such appraisements will be arbitrary.

46. As regards the provisions relating to the deductions from the gross assets, objection is taken to items (b) and (h) of Sub-section (1) of Section 27. The first relates to agricultural Income Tax. Apart from the more serious objection as to the validity of the Act itself, which will be dealt with later, the minor objection taken is that such Income Tax is merely a personal tax and not a tax on the land, and that, therefore, it has no relation to any legitimate principle of compensation for the compulsory acquisition of the land itself. This argument, however, is without substance. It may be that in one sense the income tax whether agricultural or otherwise, is personal, being payable in respect of the profits that a person receives from various sources of income. It may also be true that the agricultural Income Tax is not a charge on the land. But the tax is quite clearly one which arises in consequence of and out of the agricultural income which the proprietor gets from his estate. Therefore, when the net income of the estate has to be gathered, the tax which he has to pay, in consequence of the income, is clearly a legitimate deduction. It is not suggested that the adoption of net income as the basis for calculation of compensation is not valid.

47. The next objection is as regards item, No. (h) of Section 27(1) and arises

from the somewhat vague language thereof. It is an item of deduction from the gross assets in the following terms :

"Any amount which the compensation officer may consider suitable on account of damage, destruction, or deterioration in value of forests, or other properties brought about after the first day of January, 1946, by any act of omission or commission of the intermediary."

It is urged that this authorises deduction of the total amount of the damage, destruction or deterioration from the gross assets itself for the purpose of calculation of net assets. It is pointed out that what is so deducted is the capital loss and not the loss of annual income attributable to such capital loss and is hence illegal. The argument of the learned counsel for the petitioners in this behalf is not without force. But the provision in Section 26(1) (h) is to be reasonably construed. The word "suitable" is elastic and this provision must be taken to mean and authorise the deductions only of the annual depreciation of income as a result of the capital loss by way of damage, destruction or deterioration in the value of the forests, etc. So construed, there is no room for the objection taken in this behalf.

48. Objections have also been raised to quite a number of provisions which vest in certain officers the power to recognize or can-cel various transactions according as, in his opinion, such transactions are or are not bona fide. These provisions are objected to as being an infringement of vested rights for which there is no reasonable justification and also as violating fundamental rights, and hence illegal. It is also objected that they are expressed in terms which are vague and which give room for arbitrary exercise of powers. Some of the provisions referred to in this context, are Section 5 (i). Section 6(2), and (3) and Section 7(2). These concern mainly the interests of third: parties and not merely those of the intermediaries concerned. We consider that the questions, if any, relating to those provisions should be left to be determined in other appropriate proceedings in the presence of such third parties so affected. We do not propose, therefore, to say anything about them in this judgment.

49. I shall next take up the consideration of a question that has been very strenuously and elaborately argued before us and which has taken a considerable part of the hearing on these applications. The question raised is that that Government of the day which was in office from 1946 to 1952, passed a series of legislative enactments in anticipation of the passing of the Estates Abolition Act, and that the said enactments were passed in pursuance of a scheme designed to deflate the gross assets of an estate, and inflate the deductions therefrom so that they may be utilised in any future calculation of compensation payable on such acquisition. The deliberate object of the scheme is said to be the taking over of the estates on payment of nominal compensation or no compensation. It is accordingly urged that these legislative enactments, in so far as they are designed to produce that effect, and are now utilised or intended to be utilised for the above purpose, are void and of no effect, as being a legislative fraud. The

Acts which have been referred to as having been passed in pursuance of such a scheme are hereunder set out in a tabular form".

Date of Governor-General's assent.

Orissa Act 8 of 1947 (The Orissa Preservation of Private Forests Act) ... 14-3-1947. (This was in supersession of Orissa Ordinance No. 5 of 1946 on the same subject) Orissa Act, 19 of 1947; The Madras Estates Land (Orissa) Amendment Act) ... 17-6-1947. Orissa Act 24 of 1947, (The Orissa Agricultural Income Tax Act) ... 9-7-1947. Orissa Act 1 of 1948, (The Orissa Communal Forests and Private Lands (Prohibition of Alienation) Act) ... 5-2-1948. Note: Section 1, Clause (3) shall be deemed to have come into force on the 1st day of April, 1946.

Section 4 : Any transaction of the nature prohibited by Section 3 which took place on or after the 1st April, 1946, shall be void.

Orissa Act. 3 of 1948; (The Orissa Tenants Protection Act) ... 5-2-1948

Note: Section 1, Clause (3) shall be deemed to have come into force on the 1st day of September, 1947.

Orissa Act, of 1949 (Tenants Protection Amendment Act) ... 12-4-1949.

Date of President's assent.

Orissa Act, 2 of 1950 (Tenants Protection Amendment Act) ... 13-4-1950. Orissa Act, 17 of 1951 (Tenants Protection Amendment Act) ... 14-4-1951. Orissa Act, 15 of 1950 (The Orissa Agricultural Income Tax (Second Amendment) Act) 12-9-1950.

50. Apart from the arguments as regards the scheme constituting a legislative fraud, all the Acts have been independently challenged as having infringed constitutional limitations. So far as such independent attack with reference to the Orissa Tenants Protection Act is concerned, we have, after reserving our judgment in this case, heard another pending application before this Court -- "Sasibhushan Pati v. Mangul Biswal", O. J. C. No. 28 of 1951 (22) raising that question separately and in a direct form. By our recent judgment delivered, therein on 12-1-1953, we have held that the Orissa Tenants Protection Act, as such, is not open to any of the constitutional objections thereto raised. As regards Orissa Act, 8 of 1947 (The Orissa Preservation of Private Forests Act), and Orissa Act, I of 1948 (The Orissa Communal Forests and Private lands (Prohibition of Alienation) Act), the constitutional objections that could be suggested are more or less of the same nature and are not, therefore, sustainable. So far as the Orissa Agricultural Income Tax Acts are concerned, the objection to the first Act of 1947, has been given up. The independent objection to the second, viz., Orissa Act 15 of 1950, is that the said Act, in so far as it adopted the extremely high rate of taxation of twelve annas six pies in the rupee for slabs above one lakh and fifteen thousands, is virtually confiscatory as well

as discriminatory at least in respect of that high slab, and has exceeded the permissible limits of taxation. In view, however, of the well-established principle that the State's power of taxation is virtually the power to destroy and in view of the specific exception provided in Article 31 of the Constitution in favour of a law levying a tax (see Sub-clause (5) of Article 31, Clause (b)), there is no substance in these objections. Further, the levy of progressively higher rates of taxation in respect of higher slabs of income, which might have the appearance of being discriminatory, has been recognized as valid under the stress of socialistic thought relating to taxation of "unearned incomes". The recent judgment of the Madras High Court reported in --"Ananthakrishnan v. State of Madras", AIR 1952 Mad 395 (Z3) which is relevant in this context, is instructive. Accordingly the independent objection to the validity of the series of Acts above noticed, remains only as regards the Orissa Act, 19 of 1947, in so far as it contains provisions relating to rent-settlement operations. This Act applies only to the ex-Madras area. The question so raised, will be separately dealt with in the closing part of this judgment.

51. The general fraudulent scheme of the Legislature is said to be clear from the fact that under some of these legislative enactments, the proprietors have been statutorily prevented from) making full use of their resources and from enhancing their average income during the period commencing from 1947 and ending on the date when the notification under the Abolition Act is to be issued, while the gross assets taken for computation of compensation u/s 26(2) of the Act are the assets or income from various sources as they obtained "in the previous year" that is, the agricultural year preceding the date of the notification. u/s 3 of Orissa Act, 8 of 1947, a proprietor is prohibited from alienating in any way any portion of the forest in his Estate, except with the previous sanction of the Provincial Government, or of an officer authorised, by it in this behalf, or to cut trees therefrom or to do other acts diminishing its utility as a forest. Similar provision has been made by Section 3 of Orissa Act, 1 of 1948, restraining alienation of any kind, or conversion into rai-yati land, or creation of occupancy rights, by the proprietor, in any communal forest or private lands. Under Sections 6, 7, 8 and 9 of Orissa Act, 19 of 1947, power has been vested in the Local Government to make drastic reductions in rents payable to the Zamindars of the ex-Madras area by directing settlement operations and also to give retrospective effect to such rents. By Sections 3 and 6 of Orissa Act, 3 of 1948, the proprietor has been prohibited from ejecting his temporary tenants in respect of his private lands and from realising as rent more than 2/5ths of the gross produce. Under the same Act, a proprietor of the ex-Madras area has been prevented from realising from his occupancy raiyat anything more than 1/6th of the gross produce as rent. By Orissa Act, 24 of 1947, a new and hitherto unknown item of deduction out of the gross rental income of the proprietor has been introduced by way of agricultural Income Tax. Not content with it, the Orissa Legislature has steeply enhanced "the same by the later Act, Orissa Act, 15 of 1950.

52. Though all the above Acts were referred to as part of the fraudulent

legislative scheme that contention was virtually given up in. the course of the argument in so far as such of them were passed prior to the commencement of the new Constitution, that is, in respect of those passed before 26-1-1950. In the judgment of the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, " where a similar argument was raised in respect of the Madhya Pradesh (Abolition of Proprietary Rights) Act the same was repelled by the Supreme Court, as appears from the judgments of Mahajan, J. and Das, J. in that case at the bottom of p. 438 and at bottom of p. 444 and top of p. 445 (of 1952 SCJ): The judgment of his Lordship Mahajan J., in particular, refers to the fact that the Acts therein which were challenged as part of the legislative scheme, were all of them passed prior to the coming into force of the Constitution and holds that, therefore, it was not possible to say, in the absence of any clear evidence, that there was at any time any fraudulent design for defeating the provisions for payment of compensation contained in the Constitution. The same consideration applies equally to the Acts above mentioned prior to 1950. The attack, therefore, in respect of the various legislative enactments, passed by the Orissa Legislature during the years 1947 to 1951, as being the outcome of a fraudulent legislative scheme, has boiled down finally to an attack on Orissa Act, 15 of 1950, relating to enhancement of agricultural Income Tax, as being the outcome of a fraudulent design of the Legislature.

53. Before taking up a consideration of the above aspect of the case, it is as well to notice another minor argument, which, though not directly connected with the above matter, has been incidentally urged with reference to the passing of the various enactments from 1947 to 1951, and arising from the provision of the 1st January 1946, as the date-line indicated for certain purposes in various sections of the Estates Abolition Act; and the provision that the gross assets to be taken for the purpose of calculation of compensation, is the income of a single previous year. The argument advanced in this respect is that the Estates Abolition Act has, by these various provisions taken over the estate as it was at an earlier date, that is, either 1-1-1946, or some later date much prior to the date of notification, while the compensation awarded is only with reference to the gross assets as on the date of notification, that is, by taking the income only of the previous year. It is accordingly urged that the principle adopted for compensation has no relation to the facts of the estate as it is, when it is acquired, but to the estate as it was by 1-1-1946 or some later date. To appreciate this argument, it is necessary to know exactly this phenomenon of taking over the estate as it stood on a prior date is said to arise. According to the petitioners' counsel this results from: (1) certain provisions of the Abolition Act itself, and (2) the previous enactments from 1946 to 1950 already noticed. The provisions of the Abolition Act, which have bearing on this aspect are, Section 2, Clause (1); Section 5, Clause (1); Section 6, Clause (1) and Clause (3); Section 25; and Section 27(h). It is true that some of these sections reserve to the Government the power to cancel certain settlements, leases or transfers regarding lands, mines, or buildings, entered into after 1-1-1946, or buildings constructed after 1-1-1946, and also to

recover any damage, destruction or value of other properties brought about after 1-1-1946, if a Collector is satisfied that such acts were not bona fide, but were done for purposes of defeating the provisions of the prospective Act for abolition of the estates. But it is obvious that if the power to cancel those transactions is validly exercised, and the items of property covered thereby are taken over, the income from those properties also must enter into, the calculation though what so enters is not the income prior to the impugned transactions, but the estimated probable income which those items should have fetched in the year prior to the date of notification. There can be no question, therefore, of such provisions resulting in the taking over of the estate as it was on an earlier date, on paying compensation only with respect to the estate as it is on a later date. Such a contention appears to be based on a misconception. All that can be urged is that the power to set aside such prior transactions and to take over the estate as on the earlier date, may be or may appear to be excessive. But it may well have been a matter of legitimate policy. The significance of the date-line adopted, viz., 1-1-1946, however, is admitted by counsel on both sides. It was about that time that the Congress Party which was keen on the abolition of zamindaries, had put this in the forefront of their party's policy statement. There was a reasonable and definite anticipation at the time that the said party will take up the Government of the country and introduce such measures, of agrarian reform. It may, therefore, not have been improper to anticipate that the landlords, in order to minimise their own losses by virtue of the contemplated legislation for abolition of the estates, might considerably depreciate the assets of their estates by mala fide transfers and acts of waste, and to provide for it. Indeed, it is in pursuance of this apprehension that the various Acts above noticed, appear to have been enacted, which were meant to prevent such mala fide action, i.e., Orissa Ordinance No. 5 of 1946 (Orissa Preservation of Private Forests Ordinance) and Orissa Act 1 of 1948 (The Orissa Communal Forests and Private Lands (Prohibition of Alienation) Act, 1948) etc. The real complaint, if any, in this matter, is not so much that assets as on a previous date are taken over without any compensation in respect of them, but that the normal enjoyment and income has been considerably hampered and the development of the resources in the estate like waste lands and forest lands has been prevented by the above Acts, and yet instead of taking the normal "average" income in respect of those items, prior to these Acts, what is taken into consideration, is the income of only just the previous year after a considerable period of the aforesaid statutory depreciation of the income and resources. The above-mentioned Acts did not prohibit any normal enjoyment or development of those resources. It merely required the permission of the Collector to be taken before cutting any portion of the forests or felling trees and before any alienation. It provided also an appeal, where the permission was unreasonably refused. It must, therefore, be assumed that all that was done is to bring these items under control so as to prevent undue spoliation, but not to affect the normal income or development. Whatever, therefore, may have been the actual facts relating to the way in which these Acts were worked, the Court cannot assume that the previous year's income in

respect of these items does not represent the fair income with reference to those items of assets. There is, therefore, no legal force in this aspect of the argument.

54. Now to resume the thread of the main contention raised before us relating to the Orissa Agricultural Income Tax (Second Amendment) Act, 1950 (Act 15 of 1950), it is to be noticed that u/s 27(l)(b), any sum which was payable in respect of an estate as agricultural Income Tax in "respect of any agricultural income derived from such estate during the previous agricultural year, is one of the items of deductions from the gross assets as calculated u/s 26(2), in order to arrive at the basic net income with reference to which the compensation payable is calculated u/s 23, Sub-section (1) of the Act. The first Orissa Agricultural Income Tax is on a slab basis, the highest rate of such Income Tax payable being annas three in a rupee on a slab above Rs. 30,000/- of agricultural income. The Amendment Act 15 of 1950 provided for increased rates of Income Tax in respect of slabs over Rs. 15,000/- and the highest rate being annas twelve in a rupee on a slab above one lakh and fifteen thousand of agricultural income. The argument as regards the fraudulent legislative scheme is only with reference to this steep rise in the agricultural Income Tax affected by the Amending Act of 1950, which is utilised as one of the main deductions from the gross assets. The contentions in this behalf are based on the assumptions: (1) that the facts and circumstances relating to the passing of the Agricultural Income Tax (Second Amendment) Act of 1950 and the Estates Abolition Act of 1951, make out a deliberate scheme in fraud of the law, in order to beat down the compensation payable, and (2) that such a fraudulent scheme renders the relevant enactments or the portions thereof connected as a scheme invalid.

55. In support of the alleged fraudulent scheme, the following facts and circumstances have been relied upon. The Orissa Estates Abolition Bill was published on 3-1-1950., and introduced into the Legislature on 17-1-1950. It was passed on 28-9-1951, and, on receiving the assent of the President, became law on 23-1-1952. The Orissa Agricultural Income Tax Amendment Bill of 1950, was published in the local Gazette on 8-1-1950, but appears to have been actually introduced in the Legislative Assembly in August, 1950, after a fresh publication of an altered Bill on 22-7-1950. It was passed into an Act on 10-8-1950, and received the assent of the Governor on 19-9-1950. Under the earlier Agricultural Income Tax Act of 1947, the tax, as already stated, was on a slab system, on a progressive scale of taxation, the highest scale being three annas in the rupee applicable to the highest slab, i.e.. above Rs. 30,000/- of agricultural income. Under the first bill of 1950, which was published on 8-1-1950, the substantial change contemplated was that the highest slab was reduced to upwards of twenty thousand and the rate of tax thereon was increased from three annas to four annas in a rupee, with a slight increase in respect of the lower slabs. In the Act, however, as finally passed on the basis of the altered Bill published on 22-7-1950, the change in the rate of taxation was much more steep and drastic. The later Act (Orissa Act 15 of 1950) as already stated introduces steep rise in the rate of taxation and also introduced further slabs different from what

were provided in the earlier Act or Bill. The Act, as finally passed, while leaving the first four slabs ranging up to an aggregate agricultural income of Rs. 15,000/- untouched, either as regards the slab or as regards the rate of tax, alters the remaining three slabs of the previous Act by substituting for them as many as 11 slabs and also prescribes for them graded scales of tax ranging from 0-2-6 to 0-12-6 in the rupee. The last slab in the earlier Act was upwards of Rs. 30,000/- while the last slab under the amended Act is upwards of Rs. 15,000/- and in respect of it the highest scale of tax, viz., 0-12-6 in a rupee is payable. There can be absolutely no doubt that this is an extremely drastic change not only from what the tax was under the Act of 1947, but also from what was even contemplated by the Amending Bill as originally published in January, 1950, after the publication of the Estates Abolition Bill itself.

56. Arguments have been addressed to us to make out that the Bill was altered and published in July, 1950, and passed into law in August, 1950, for the deliberate purpose of deflating the compensation ultimately payable to the intermediaries. In proof thereof, certain affidavits have been filed on behalf of the petitioners to show that the substantial addition that the Amendment Act produces was one payable only by the intermediaries and that in view of the impending abolition of the Estates, the Legislature could not have contemplated this addition as anything like a standing, if not, a permanent contribution to the financial resources of the State. It is contended, therefore, that though according to the professed object of the amendment the tax was enhanced for the purpose of financing certain development schemes, this was nothing more than a mere pretence of the Legislature. The statement of Objects and Reasons of the Bill as published on 8-1-1950, was as follows:

"With a view to financing the various development schemes which the Government of Orissa have undertaken, it has become necessary to increase the revenues of the Province. The primary object of this Bill is to increase the revenues of the Province by enhancing the existing rates of agricultural Income Tax by suitable amendment of the schedule attached to the Orissa Agricultural Income Tax Act of 1947. Other Provinces have already taken steps to increase their revenues through this source. Section 5 of the Act has been amended with a view to reduce the taxable limit to Rs 3,500/-."

And it is urged that the object so stated is a sham one. In order to help us to come to a fair conclusion on the question of facts so raised, we asked the Advocate-General to furnish us certain statements. Three state-men's dated 28-11-1952, 1-12-1952, and 13-12-1952, have been filed in compliance with the suggestion and are placed on the record. The gist of those statements may be exhibited in the following tabular form:

1. Statement showing Demands of Agricultural Income Tax.

(Abstract of Statements 1 and 2 filed on the-28th November, 1952, and the 1st December, 1952.)

Assessment Year

Assessee 1949-1950 1951-1952

Rs. Rs.

Intermediaries 3,44,783 8,86,040

Non-Intermediaries 2,59,234

1,53,456

Aggregate 6,04,017

10,39,498

Note: The assessments for the year 1951-52; for incomes below Rs. 20,000/- have not yet been made. Hence the said demands are not yet included. This has been stated on affidavit by the Collector of Commercial Taxes-and Agricultural Income Tax.

II. Classification of Income-Groups of assessee and the Demands in respect of them, for the year 1951-1952.

(Abstract of Statement III filed on the 18th-December, 1952.)

Intermediaries Non-Intermediaries

1. Agricultural income above Rs. 55,000 8 Nil

2. Agricultural income above Rs. 15,000 upto Rs. 55,000 20 27

Extra assessment for each class in (2) above, for 1951-1952. Rs. 21,474 Rs. 16,012

Note: The figures furnished are only for 6 Agricultural Income Tax Circles out of the 12 Agricultural Income Tax Circles. It is stated on affidavit that the figures had not been received from the other Circles by the date the statement had to be filed.

This statement undoubtedly shows that above the income-group of Rs. 55,000/- there is no non-intermediary and that an additional income of rupees five lakhs for the year 1951-52 is contributed only by about 8 intermediaries falling within the said high-income group of above Rs. 55,000/- income. (This may appear to be highly discriminatory but as shown above, is not unconstitutional on that ground. The deduction based thereon, does in one sense operate discriminatorily, but of the nature of tax deducted, which though discriminatory, is valid.)

57. In view of the somewhat incomplete information available, it is not possible to arrive at absolutely accurate conclusions. But it is clear that the non-intermediaries in the income ranges below Rs. 55,000/- per annum are larger in number and that it cannot be predicated that within that range the extra contribution of Income Tax is substantially only by the intermediaries. On the

whole, however, it may reasonably be taken that if the complete figures for the year 1951-52 are available, the extra Income Tax demand able with reference to income-groups ranging from Rs. 15,000/- to Rs. 50,000/- is not likely to exceed, in any case, Rs. 1,00,000/- (one lakh) and probably not more than half of it would arise from, non-intermediaries. There can, therefore, be no doubt that on the most liberal estimate, the result of the Agricultural Income Tax Amendment Act of 1950, is that, out of the addition of a little less than six lakhs income, which the State might get as a result of the amended Agricultural Income-tax Act of 1950, over five lakhs and odd would arise from the intermediaries alone and not more than half a lakh from the non-intermediaries. It would, therefore, be not unreasonable to assume that the Government which was responsible for the 1950 Agricultural Income Tax Amendment Act, with its steep rise in the scales of taxation, as well as the Legislature which passed it, must have been conscious that this addition to the financial resources of the Government by way of agricultural Income Tax would virtually dwindle down into a comparatively small item of revenue as soon as the Estates Abolition Scheme was completely implemented. The question, however, arises whether on this account it can or should be held that the Amending Act was passed "not" for the purpose of getting any additional income to augment the financial resources of the government but for the sole or primary purpose of being available as an item of deduction from the gross assets in the prospective Estates Abolition Scheme.

58. Learned counsel for the petitioners very strenuously relied upon the report of the Land Revenue and Land Tenure Committee, Orissa, published by the Government in the year 1949. This was a report of the Committee set up by the Orissa Government by resolution No, 7533-R., dated the 15th November, 1946,

"for the purpose of recommending legislative and other measures to reform the different systems of land tenure that were in vogue in different parts of the Province with a view, amongst other things, to eliminate, as far as practicable, all intermediary interests that exist (at present) between the cultivators and the State, and also in case the Committee felt called upon to recommend State acquisition of all intermediary interests between the cultivator and the Government, to report on the financial and administrative implications of such acquisition."

A reference to this report was considered legitimate and the report itself has been placed on the record in this case, in view of the fact that the Statement of Objects and Reasons of the Orissa Estates Abolition Bill as introduced in January 1950, refers to this Committee and its recommendations in the following terms:

"The Land Revenue and Land Tenure Committee which had been set up by the Provincial Government to recommend amongst other things legislative and other measures regarding the elimination of all intermediary interests that exist at present between the cultivators and the State, and the State having also accepted the principle of elimination of intermediaries, and having accepted that the proprietors and other intermediaries between the raiyat and the State, the

Provincial Government are convinced that the zamindari system in force in the Province has outlived its usefulness and should be abolished at the earliest possible moment."

Various passages from this report, have been read to us in the attempt to show that the steep enhancement in the agricultural Income Tax was part of a deliberate scheme foreshadowed and contemplated in this report for the purpose of providing only nominal compensation for the compulsory acquisition of estates. A perusal of the report, however, shows that this inference is not legitimate. Undoubtedly, the report did recommend elimination of intermediaries as appears from recommendations No. 4 and 9 at pp. 17-18 of the report. The report also, no doubt, recommended nominal compensation as appears at p. 82, para. 51, which is as follows:

"It is our considered opinion that the legislature will be perfectly justified in providing for a nominal compensation as abundant caution, only to satisfy the legal requirement u/s 299(2) for payment in cash."

In fact, the nominal compensation recommended is rupee one as appears from p. 38, para. XI. But it was an integral part of the scheme which, this Committee recommended, as appears from p. 17, recommendation No. (vii) of the report, that the excluded proprietors should receive "Malikana" to be paid annually and in "perpetuity". That recommendation is as follows:

"The proprietors, tenure holders, and other persons who will be deprived of the possession and management of their estates or interests by this scheme will be entitled to. receive Malikana to be paid annually and in perpetuity."

It is to be noticed that the nominal compensation contemplated at p. 82, para. 51, above referred to was in addition to the Malikana. It would also appear that the Malikana payment contemplated in the recommendations of the Committee is on a substantially higher scale than what would be the annual sum payable by way of compensation under the present Act by virtue of Sections 28(1) and 37(3), right up to the" limit of estates with a gross asset of about one lakh. Taken in that light, and considering the Malikana also as, in substance, compensation, and also having regard to the fact that the Malikana was contemplated to be a perpetual annuity and not an annual payment limited to thirty years, it is quite clear that the Committee did not recommend or contemplate a mere nominal compensation as such, but only an additional nominal compensation of one rupee to satisfy what they considered to be a legal technicality and by way of extra caution to provide an answer for possible challenge in Courts. It may be noticed that the Madhya Pradesh Act followed a somewhat similar line by providing a rehabilitation grant to ex-pro-priated proprietors in addition to compensation. This has been noticed at the top of p. 432 (of 1952 SCJ) by his Lordship Mahajan, J. in his judgment in *The State of Bihar Vs. Sir Kameshwar Singh*, ". It cannot, therefore, be said that the scheme of abolition recommended by the Land Tenure Committee contemplated a

nominal compensation as at present understood. It is, however, abundantly clear that it did not provide compensation according to market-value. The very thesis on which the scheme recommended by them is based, shows that in their opinion, zamindari rights are on what may be called "strict rights of property" which require to be compensated under the law. It is further to be noticed that there is no reference in their recommendations to a deduction by way of agricultural Income Tax at all from the annual gross income in order to arrive at the annual net income for the purpose of calculating the Malikana. This is all the more significant because the questionnaire which the Committee issued with reference to item No. 6 of the terms of reference, that is, as regards the financial implications of the acquisition of intermediary estates in para. 57, item (ii) in Appendix (I) contains a question as to "the desirability of deduction from the gross income on account at the Agricultural Income Tax." In their final views they make a categorical reference to the question of Agricultural Income Tax at p. 41 of the report in para. 15, wherein they extract the following recommendation from what is referred to as the Nehru Committee. "The present land revenue system should be replaced by progressive taxation of Agricultural income". Notwithstanding this view, they seem to have been inclined "against" agricultural Income Tax for they state as follows:

"For a province like Orissa where the agricultural Income Tax is already there, the implementation of this recommendation will mean the abolition of land revenue."

59. Their final conclusion at p. 43, para. 16, appears to be not that the land revenue should be abolished, but that it should be deprovincialised and handed over to local authorities for local purposes. There is nothing, therefore, so far as I could gather, from the Committee's recommendations, which suggests either nominal compensation taken in the aggregate or the enhancement of agricultural Income Tax as a means of bringing about a mere nominal compensation. While, therefore, it would be quite true to say that the introduction of the Estates Abolition Act was, in some, measure, based on the recommendations of this Committee, it is not correct to say that any scheme for mere nominal compensation by the enhancement of agricultural Income Tax as a means therefor, was inspired by the recommendation of this Committee. Our attention has been drawn to the two memoranda printed in Appendix, II, one by Sri H. Mahatab, the then Premier of Orissa, who, it may be noted, as appears from the Statement of Objects and Reasons appended to the Orissa Estates Abolition Bill introduced on 17-1-1950, was the Member in charge of the Bill and also another note by Sri Nabakrishna Choudhury, who was the Chairman of that Committee and who is the present Chief Minister of Orissa. These two notes indicate that the then Premier and the present Chief Minister had somewhat different approaches to the problem of abolition of estates. I am unable to see, however, what bearing these notes have got with reference to the question now at issue, viz., whether or not the enactment of the Agricultural Income Tax Act of 1950, was part at a deliberate and intended scheme with reference to the prospective Zamindari

Abolition Act. It is suggested that this difference in their approaches, as reflected in these two notes taken with the further fact that the Agricultural Income Tax Amendment Bill as contemplated in January, 1950, when Sri H. Mahatab was the Premier, contemplated only what may be called a moderate increase, while that which was introduced in August, 1950, enacted a very drastic increase, would indicate that it was a deliberate and intentional step taken for the purpose of reducing the compensation. That the change in the rates of taxation from those proposed in the Bill to those actually put up before the Legislature when it was introduced, was the deliberate and intentional responsibility of the Government of which Sri Nabakrishna Choudhury was the Chief Minister, is, of course, obvious. But it does not follow, and it is not a matter that can be assumed without any other evidence or indication, that the change was made with the sole or primary object of merely beating down the compensation payable under the Estates Abolition Scheme then pending on the legislative anvil and not for the purpose of "financing the various development schemes in the State," as reiterated in the Statement of Objects and Reasons appended to the revised Bill published on 22-7-1950. That there are large scale development schemes in the State which were then in progress is a matter of common knowledge, and is stated on affidavit by the Revenue Secretary. That Orissa is financially considered a deficit Province depending on sub-ventions from the Centre is also well-known. In such a context it cannot be assumed that any measure of taxation for the stated purpose of additional financial resources is a pretence. It is true that any person responsible for the contemplated increase of provincial revenues by the amended Agricultural Income Tax Act, should have been conscious of the likelihood of such increase being temporary in view of the pendency of the legislation for the Estates Abolition. Indeed the temporary character of the substantial portion of the revenues raised by this tax and the likelihood of its affecting adversely compensation payable to intermediaries was quite obvious at the very outset from 1947 itself as appears from the dissenting minute of one of the members of the Select Committee, Sri Sailendra Narayan Bhanj Deo, in the Bill of 1946, and also from the Land" Tenure Committee Report itself at p. 42. But there is nothing to show, what was the known or contemplated gap between the date when the Amended Agricultural Income Tax Act would come into operation and when the Estates Abolition Act, even if passed, would be actually introduced. Just because it has happened as a fact that the gap is now found to be only about two years, it does not follow that the Legislature at the time knew it would be two years or less. For instance, Bengal was one of the earliest of the Provinces which took up the question of gamindary abolition and produced the authoritative report of the Flood Commission in 1940, recommending abolition of zamindaries. Bengal also put forward "The Bengal State Acquisition and Tenancy Bill" in 1947 (vide p. (v) of Appendix (1) of the Orissa Land Tenure Committee Report). So far as I am aware, the Bengal scheme has not yet been implemented. In the vicissitudes of political conditions and party Governments and in the context of the then pending elections, it is hazardous to assume that the Legislature of Orissa in 1950, was reasonably certain that the Estates

Abolition Scheme would materialise in so short a time as to make the contemplated addition to the revenues, by the amending Agricultural Income Tax Act of 1950, illusory. If any, the very difference in approach to this problem which the two chief political leaders of the Congress Party in the Province are said to have had -- a matter to which our attention has been drawn by reference to their minutes in the report of the Land Tenure Committee -- might well be a reason to think that none could be certain as to when the Estates Abolition Act would be passed, and be implemented by issue of the requisite notifications. No evidence of any of the legislative proceedings at the time when the Agricultural Income Tax Amendment Act of 1950 was passed, has been adduced to show that any objection was raised by anybody stating that this measure was virtually to be a dead letter as a measure of increased taxation, inasmuch as the Estates Abolition Act was reasonably certain to come into operation almost immediately or within a very short time. All that can, therefore, be said is that to the knowledge of the Legislature, at the time, the contemplated addition would probably be a temporary phase. But no assumption can be made as to the period thereof (it may well be some years), nor having regard to the well-known stringency of the finances of the Orissa State already referred to, is there any uncontrovertible reason to assume that even such a temporary addition may not have been a substantial reason for the steep rise of the taxes which produced five to six lakhs of additional revenue per year. Besides, I am unable to see why the Legislature in August, 1950, should have been obliged to adopt the suggested devious method of enhancing the agricultural Income Tax for future use in the Estate Abolition Scheme, merely with a view to deflate the compensation. Already by that date, the Constitution had come into operation, and Article 31(4) had been specifically made part of the Constitution, and the Orissa Legislature had introduced the Estates Abolition Bill into its Legislature in January, 1950, to take advantage of the protection as afforded by Article 31(4) against grossly inadequate and nominal compensation could equally have been served by merely and openly reducing the multiples to be adopted for calculation of compensation or in some other way, which it is needless to speculate. It is just possible that the Legislature had in view both the purposes. But it would be hazardous to conjecture which can be considered primary.

60. Where the bona fides of a Legislature as such and not of any individual are involved, the absence of bona fides and the presence of a positive intention which is said to have a relevance on the validity of the legislative enactments is not a matter that can be decided on mere balance of probabilities. The mala fides so alleged must be strictly proved to the hilt and beyond any reasonable doubt. In this context, it is instructive to refer to Willoughby on "the Constitution of United States" Vol. I, Chapt. II, para 26, where the learned author points out the presumption in favour of constitutionality of an Act and shows that the facts on which the Constitutionality is challenged must be made out beyond reasonable doubt. At the bottom of p. 44 of the book, the learned author refers to the opinion of Thyer, that this is analogous to the familiar principle of benefit of

reasonable doubt in criminal law. Cooley on "Constitutional Limitations" Vol. I, at p. 371 and p. 372 and p. 374 reiterates the same principle. Considered from that standard, I am not prepared to come to a conclusion that the primary purpose of the Orissa Agricultural Income Tax Amendment Act was "not" to raise the provincial revenues but only to utilise it in fraud of the law for purpose of beating down the compensation in the then pending scheme of the Estates Abolition. I hold, accordingly, that the assertion in the Statement of Objects and Reasons of the Bill published in July, 1950, that the increase in taxation has been necessitated by the various development schemes is not made out to be a pretence.

61. Assuming, however, that the scheme alleged, is made out, and that the deliberate object of the Legislature in enacting the Orissa Agricultural Income Tax Amendment Act of 1950, was to utilise it as an item of deduction in the prospective zamindari abolition scheme, the question that arises is whether this invalidates the Agricultural Income Tax Amendment Act itself, or, the utilisation thereof in the Estates Abolition Scheme or both. On this aspect, it is necessary to make a few preliminary observations. It is well settled that what may be called the mere object or motive of a legislative measure, is not by itself, an invalidating circumstance : (See Willoughby "Constitution of the United States" Vol. I p. 30, para 20, and also "76 WLR 1 at p. 186 and p. 187 (Z4)". It is also necessary to keep in mind as to what is meant by the primary purpose of a legislative measure for constitutional purpose. In Vol. II of Willoughby on "Constitution of the United States" in para 381, at pp. 671 and 672, it is stated as follows :

"When reference is made to the primary purpose of an Act attention is called to the purpose of the Act constitutionally considered. This fixes the nature of the Act --its essential character -- although it may be that looking to the motives of Congress (Legislature) leading to its enactment, and its probable effects when enforced, this primary purpose becomes relatively insignificant. In other words, the foreseen and intended incidental effects of an Act may be socially, politically, or economically far more important than its primary effect, but this cannot transmute, constitutionally speaking, the incidental or secondary purpose of an Act into its primary purpose, and thus place the Act beyond the legislative power of Congress (Legislature)."

Considered in this light it may well be said that even if the Legislature when passing the Agricultural Income Tax Amendment Act of 1950, intended that the tax should be utilised as a means of substantial reduction of compensation in the Estates Abolition Scheme and notwithstanding that the additional tax secured by the amending Act of 1950 was likely to become comparatively small after the abolition scheme comes into operation, the primary purpose of the Act constitutionally considered, must be taken to be the raising of the substantially additional sums by way of agricultural Income Tax, for the purpose of general revenues until the Estates Abolition Scheme came into operation. The additional

sum so leviable during that temporary period was not likely to be negligible item by itself and the period for which that additional sum might be levied was also uncertain and not known to be too short to be of any use for taxation. It is also further necessary to emphasize, before examining the argument as to the legal effect said to have been produced by the alleged fraudulent scheme, that there is always a distinction in principle between what is called a "fraudulent exercise of the legislative function by the legislature and the fraudulent exercise of executive or statutory powers by executive authorities or statutory bodies". In this latter class of cases, it is well settled that fraud or mala fides or even irrational conduct, by itself, vitiates such acts. (See --"Galloway v. Corporation of London", (1864) 46 ER 356(Z5) and --"Westminster Corporation v. L. N. W. Ry Co.", (1905) A. C. 426(Z6), also cited in the judgment of Justice Mahajan in *The State of Bihar Vs. Sir Kameshwar Singh*, ". But the exercise of legislative functions even though the law-making authority is of limited or qualified character, stands on a totally different footing. As pointed out by Cooley on "Constitutional Limitations" Vol. I, pp. 379-330

"In dealing with the effect of inquiry into the legislative motive, the question as to whether the statute is constitutional or not, is always a question of power. The question "always is whether the Legislature in the particular case, in respect to the subject-matter of the Act, the manner in which its object is to be accomplished, and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions. In any case in which this question is answered in the affirmative, the Courts are not at liberty to inquire into the proper exercise of the power. They must assume that legislative discretion has been properly exercised."

X X X X "And although it has sometimes been urged at the bar that the Courts ought to inquire into the motives of the legislature where fraud and corruption were alleged, and annul their action if the allegation were established, the argument has in no case, been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the Governor in the exercise of a discretion vested in him exclusively. He is responsible for his acts in such a case, not to the Courts, but to the people."

In spite of these well-established principles, it is strenuously urged that on proof of the object of the Legislature, as alleged in passing the Agricultural Income Tax Amendment Act of 1950, it must follow in law that either the importation thereof into the Estates Abolition Scheme is invalid, or the taxing Act of 1950, itself is invalid. In support of this argument, the decision of the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, ", as also a number of Privy Council cases, and cases of the Supreme Court of United States of America have been cited before us.

62. So far as the decision of the Supreme Court is concerned, it is true that the majority judgment in the case reported in *The State of Bihar Vs. Sir Kameshwar*

Singh, ", has recognized the principle of examining the individual provisions relating to the question of compensation, to see whether any of them can be said to be by way of fraudulent exercise of legislative competence in respect of Entry No. 42. List, III. But a close perusal of the various passages in the judgment of his Lordship Mahajan J. at np. 273, 275 and 276 of *The State of Bihar Vs. Sir Kameshwar Singh*, , shows clearly that it is only where a particular provision has no relation at all to the factual position as regards every case to which that provision applies that the scheme can be said to be a fraud on the legislative competence, inasmuch as such a provision is designed to produce non-payment or deprivation of compensation and is, therefore, not a bona fide principle of compensation. That this is the correct view taken, appears from the different results reached by the majority judges in respect of the provision regarding works of benefit and the provision regarding expenses of management. With reference to the former His Lordship Mahajan J. says that it is a deduction of "artificial character" -- "having no relation to facts", but as regards the latter, His Lordship says that "in its entirety" it has "no real relation to actual state of affairs" This last is explained in the succeeding sentence as meaning : "It is "partially of a confiscatory character in sufficient number of cases". So far as the facts in the present case are concerned, it cannot be said that the deduction by way of agricultural income-tax has no relation to facts, if it is a legitimate and valid deduction, it having operated as such in the previous year.

63. The Supreme Court judgment is also relied upon for showing that if the Agricultural Income Tax Amendment Act of 1950 and the importation of the said Income Tax into the Estates Abolition Act are both parts of a fraudulent scheme, the validity of both is open to challenge. There are no doubt some passages in the judgment of his Lordship, Mahajan J. (See the quotation of a passage from --"*Deputy Commr. of Taxation (NSW) v. W. R. Moran Pty Ltd.*", 61 C. L. R., 735 at pp. 387 and 388 of the report (Z7) which at first sight, may appear to support it. But the question of the legal effect of the alleged fraudulent scheme constituted by the combination of legislative measures did not really come up for consideration before the Supreme Court. It may be noticed that the argument based on such fraudulent design was only casually referred to by his Lordship Mahajan J. at the bottom of p. 437 and the top of p. 438, only to be summarily rejected.

64. There can be no doubt, however, that the principle of colourable legislation as the result of a legislative scheme has been recognized in a number of Privy Council decisions. It is interesting to note that a study of those cases reveals that this principle was rather slow to be evolved and accepted in the Privy Council. In the very early case in --"*Union Colliery Company v. Bryden*", (1899) A. C. 580 at p. 587 (Z8), where this principle appears to have been put forward by counsel, their Lordships of the Privy Council appear to have been reluctant to accept it and preferred to decide the case on the "pith and substance" principle. (See the interesting verbatim report of a portion of the argument in *Lefroy on Canadian Constitution*, pp. 78, 79, and 80). In the next case decided only a few

days later, i.e., in --"Madden v. Nelson & Fort Sheppard Rly.", (1899) A.C. 626, (Z9), their Lordships refer to the "familiar principle" that "you cannot do indirectly what you are prohibited from doing directly" and thereby made the beginning to recognize it. The full recognition of the principle of colourable legislation by the Judicial Committee emerges in their judgment in -- "Attorney General for Ontario v. Reciprocal Insurers", (1924) A.C. 28 at p. 337 (Z10), wherein their Lordships point out that :

"Where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the Legislature is really doing."

XX XX XX "It is the result of that investigation and not the form alone, which the statute may have received under the hand of the draftsman that will determine the question."

This has been reaffirmed by the Privy Council in later cases and in particular in "(1939) A.C. 468 (Z11)" and "(1939) A.C. 482 (Z12)", where it is laid down that

"the Courts will be careful to detect and invalidate any actual violation of constitutional restrictions under the pretence of keeping within the statutory field. A colourable device will not avail."

That principle has been restated with elaboration in the passage at p. 793 in "61 C. L. R. 735 (Z7)", which has been extracted in the judgment of his Lordship Mahajan, J. in the Supreme Court Report at p. 276 which is as follows:

"Where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the Legislature, is really doing. In such cases the Court is not to be over persuaded by the appearance of the challenged legislation..... In that case, this Court applied the well-known principle that in relation to "constitutional prohibitions binding a Legislature, that Legislature cannot disobey the prohibition merely by employing an indirect method of achieving exactly the same result.....The same issue may be whether legislation which at first sight appears to conform to constitutional requirements is colourable or disguised. In such cases the Court may have to look behind names, forms and appearances to determine whether or not the legislation is colourable or disguised."

(It may be mentioned that Justice Evatt's is the dissenting judgment in this case from which the above passage has been accepted by the Privy Council on the merits, in appeal, in -- "W. R. Moran Proprietary Ltd. v. Deputy Commr. of Taxation for N. S. W." (1940) A.C. 838 (Z13). While, therefore, it is clear that the principle of invalidity of a legislative measure as the result of a colourable legislative scheme must now be taken as well established, caution is required in the application thereof and I venture to think that American decisions in this

behalf cannot always be relied as a sure and infallible guidance.

65. Out of the cases cited in support of this principle invalidating a legislative measure enacted in pursuance of colourable legislation, it is sufficient to notice only some, in order to illustrate the application thereof, and to judge whether the same applies to the fact? of this case. The cases reported -- "In re Insurance Act of Canada", 1932 A C 41 (Z14), show that therein two successive attempts were made by the Dominion of Canada to intermeddle with the licensing of insurance business in the Provinces which was a provincial subject by what was ultimately held to be colourable Legislation of the Dominion. In the first case, the attempt was made by the passing of an Insurance Act and by an amendment of the Criminal Code, which rendered insurance business, in the absence of licenses relating thereto, under the Dominion Act, a criminal offence. Both were held invalid as transgressing Provincial field. In the second, a tax which was attempted to be levied on persons who insure with certain classes of insurers, without obtaining a license under the Dominion Insurance Act, was held invalid, on the ground that it was only ancillary to the Dominion Insurance Act" which though ostensibly within the Dominion competence was in substance and effect interference with the provincial field. On the other hand in the case in "(1931) AC 310 (Z15)", the Dominion declared certain trade combinations to be unlawful and also amended the criminal law by providing punishment for the same. This, however, was held to be valid, inasmuch as the field of criminal law and procedure was within the competence of Dominion Legislature and therefore, it was *opji* to the Dominion to create a new offence and provide punishment for the same. These cases which deal with legislative schemes brought about by joint operation of two or more legislative measures, illustrate clearly the line of demarcation. The cases in "1924 A C 328 (Z10)" and "(1932) AC 41 (Z14)", were declared unconstitutional, because, the amendment to the criminal law in the first, and the Dominion Insurance Act itself in the first and second, though ostensibly within Dominion competence, were in their effect and operation, infringements on the field of insurance which was within the Provincial field. In "(1931) A C 310 (215)", the entire field affected by both the legislative enactments which formed a scheme, was within the legislative competence of the Dominion and therefore the enactments were held valid. These cases, therefore, clearly show that it is only where the combined operation of two or more Acts, which form part of a scheme invades constitutional limitations by way of legislative competence that one or the other or both become constitutionally void and not where the said Acts are, all taken together, within the competence of the same legislative authority, unless it is clearly made out that some other kind of constitutional limitation is infringed thereby. The next case which has been very strongly relied upon is the case in --"Attorney General for Alberta v. Attorney General for Canada", (1939) AC 117 (Z16). This is a case relating to the constitutional validity of a taxing measure, and is important from that point of view. Three Acts of the Provincial Legislature, all passed at one session of the Alberta Legislature in 1937, and said to be part of a legislative scheme were

brought up for consideration of their validity. Those three Acts were: (1) An Act respecting the taxation of Banks; (2) An Act to amend and consolidate the Creditor Alberta Regulation Act; (3) An Act to ensure publication of accurate news and information. Their Lordships on a consideration of the entire scheme of these Acts and the effect produced by the first of these Acts, pronounced the same invalid on the ground that the purpose and effect of the Act was to legislate in respect of Banks, a subject which was not within Provincial competence, but only within Dominion competence. Here again, the same principle of legislative competence with reference to the operation of the scheme was the ultimate test. A large number of passages from this judgment have been very much relied upon in the arguments before us. On the strength of those passages, it has been argued that the Privy Council in this case decided the Provincial Act to be invalid, because, it was intended to be used, for "the purpose" of affecting the Banks. It is urged, therefore, that the purpose of a legislative scheme as such, if it is intended to hit at a constitutional limitation, would be enough to invalidate an Act. But it is clear, on a perusal of the case, that this case cannot be used as an authority for such a general proposition. The Privy Council in this case went into the purpose of the impugned taxing measure, because, as appears from the very judgment of the Privy Council at p. 130, the purpose "of the impugned Act determined the question of invasion of constitutional limitation in this particular case, because, the taxing power of the Provinces was itself prescribed in the Constitution Act in terms of the purpose as:

"Direct taxation within the Province in order to the raising of the revenue for Provincial purposes."

That in the general class of cases, it is not the purpose of a statutory enactment, but the constitutional effect and operation of the enactment which determines its validity, is quite clear from the later judgment of the Privy Council in "(1940) A C 838 (Z13)". That was on appeal from the judgment of the High Court "of Australia reported in "61 C. L. R 735 (Z7)" from which the oft-quoted passage relating to colourable legislation has been extracted in the previous portion of this judgment from out of the dissenting judgment of Evatt, J. This was also a case relating to a scheme of legislation brought about by a number of enactments taken, together some passed by the Dominion Legislature and some by the Provincial Legislatures. The validity of the Dominion legislation was challenged on the ground that the scheme taken as a whole, produced discriminatory taxation "which was constitutionally prohibited for the Dominion Legislature. In the High Court, the majority of the Judges upheld its constitutionality on the ground that the discriminatory effect is produced not by the Dominion legislation, but by the Provincial legislation and that the Provincial Legislature was under no such inhibition. The Privy Council upheld the majority judgment though on somewhat different grounds. One passage in the judgment of the Privy Council at p. 849 is instructive and is worth quoting, since it bears on some of the points hotly contested before us. It is as follows:

"Their Lordships think that in such a case as the present, where there is admittedly a scheme of proposed legislation, it seems to be necessary when the "pith and substance" or "the scope and effect" of any one of the Acts is under consideration, to treat them together and to see how they interact. The separate parts of a machine have little meaning if examined without reference to the function which they will discharge in the machine. In the present case, "the purpose and substance* of the Act as a whole which means little more than their scope and effect may properly be looked at. "The purpose in this case is inseparably connected with the substance."

"This does not mean that the Court is to seek out the object or the purpose still less the intention of the members of Parliament or the members of the Government responsible for passing the measure, but that just as in considering a statute, it is often necessary to ascertain the mischief which it was sought to remedy so in such a case as the present it is necessary to examine the scheme and to have regard to its "ultimate effect or its function" as shown in the various Acts and also of course to its substance."

This, to my mind, is a clear pronouncement that in judging the validity of a legislative scheme, what is material to be considered is the purpose or object or the effect "in the sense of the function" of the impugned legislative provision, that is to say, "the operation of the Act, and not the purpose or" the effect or the object in the sense of motive. Confusion of thought is likely to be caused in such cases, if this distinction between object, purpose, or effect meaning motive on one side and the function or operation on the other side is not kept in view.

66. Out of the decisions of the Supreme Court of the United States of America that have been cited before us, it is sufficient to refer only to a few which on the face of them were taxation measures, but whose validity or otherwise had some relation to the purpose for which they were sought to be utilised. In what are called the "Oleomargarine cases" reported in --"Mccray v. United States" (1904) 49 LEd 78 (Z17) and -- "Magnano Co. v. Hamilton" (1934) 78 LEd 1109 (Z18) taxes, on butter-substitutes like Oleomargarine artificially coloured so as to look like butter, levied for the purpose of restricting the manufacture thereof, were upheld as valid, notwithstanding their ulterior purpose, though the tax itself as revenue measure, was not a substantial one, and could not be the main object. On the other side of the line, are what are known as the "child-labour cases" reported in -- "Hammer v. Dagenhart" 62 LEd 1101 (Z19) and -- "J. W. Bailey v. Drexel Furniture Co." (1922) 66 LEd 817 (Z20), which pronounced Federal legislation purporting to regulate inter-state commerce in goods manufactured by unregulated child-labour or purporting to impose taxes thereupon, invalid as being in effect and substance, legislation relating to child-labour which was a matter within the State Legislative competence, notwithstanding that inter-state commerce or taxation was within Federal competence. The case in -- "Sonzinsky v. United States" (1937) 81 LEd 772 (Z21) relates to a tax imposed for the definite purpose of regulating certain dealings in fire-arms and was held to be

valid notwithstanding that the tax by itself was not substantial for revenue purposes. In that case, the following passage places the whole question arising in these cases in its correct perspective.

"The power of taxation which is expressly granted may be adopted as a means to carry into operation another also expressly granted, but resort to taxing power to effectuate an end which is not legitimate not within the scope of the Constitution, is obviously inadmissible." (See also Strong on "American Constitutional Law", p. 317 top).

These cases clearly show that it is only when a taxing measure operates so as to transgress constitutional limitations that it is struck down as "invalid" and not where it operates within the constitutional limitations though used for ulterior purposes. Most of the cases that have been cited above, are cases with reference to the alleged encroachment on the prohibited legislative field. There are also some cases of the Supreme Court of United States of America, which arose with reference to- the use of a taxing measure so as to infringe fundamental rights. One such is the case in -- "American Airways v. American Press Co." (1935) 80 LEd 660 (Z22). The statute impugned therein purported to impose license tax on business of publishing and advertising. The Court held that it was an invasion on the fundamental rights relating to the freedom of the Press, and on that ground invalidated the taxing measure. (66a) It is in the light of the principles emerging from these various decisions that the argument as to the invalidity of the importation of the deduction of the Agricultural Income Tax Amendment Act of 1950 into the Estates Abolition Act or of the Agricultural Income Tax Amendment Act itself has to be judged. It may be mentioned that in the earlier stages of the argument, the contention was confined to an attempt to show that only the importation of the 1950 Agricultural Income Tax into the Estates Abolition Act was invalid as being the result of a fraudulent legislative scheme. But in the later stages, it was also urged as an alternative that the 1950 Agricultural Income Tax Amendment Act itself was invalid in view of the fraudulent scheme. As has been pointed out in the above discussion, the alleged invalidity of either or both the statutory provisions referred to, whether individually or taken together, may arise only by infringement of constitutional limitations either by way of: (1) encroachment on the forbidden legislative field, or (2) infringing on any fundamental right. There can be no question as regards the first in this case, because, both the Acts taken, individually or together, clearly operate only within the permitted State field, Agricultural Income Tax and Estates Abolition being both within the competence of the State Legislature. Even in their alleged combined effect, since the Agricultural Income Tax Amendment Act is said to have been used only as ancillary to the Estates Abolition Scheme, the alleged combined operation, is well within the competence of the State Legislature. What has been suggested, however, is that the mischief brought about by the combined operation of the two legislative provisions is to produce a confiscatory result as regards the compensation payable under the Estates Abolition Scheme, under the guise of a taxing measure. The combination is, therefore, urged to be

a piece of colourable taxation which is invalid, though the tax may have, been in operation for sometime prior to the introduction of the Estates Abolition Scheme. In this connection, the following dictum in "(1931) A C 310 at p. 317 (ZI5)" has been relied on:

"Their Lordships entertain no doubt that time, alone will not validate an Act which, when challenged, is found to be ultra vires, nor will a history of gradual series of advances till the boundary is finally crossed avail to protect the ultimate encroachment."

This dictum, however, has no application to the situation in the present case. It is certainly plausible to suggest that if a taxing measure in its operation is found to produce a bare confiscation of property and not addition to the general revenues, it is a colourable tax infringing a fundamental right and therefore, invalid at least to the extent that it produces the confiscation. It is also plausible to say that the fact of the colourable aspect emerging on the passing of a later, but complementary piece of legislation with reference to which the taxation measure becomes operative as a confiscatory measure does not affect the invalidity. Whether in such a situation, the original taxing measure itself becomes void from its inception or whether it is only the subsequently discovered confiscatory effect thereof that become void, is a question that may well be debatable. However debatable these aspects may be, a little careful thinking will show that the present is not the case above suggested. Here what is alleged to be the confiscatory result arises from the fact that the Agricultural Income Tax already Levied in the previous year is taken as an item of deduction from the gross income of the estate for the calculation of the net income. It cannot be disputed that apart from the alleged colourable aspect of it such an item of Income Tax is a legitimate deduction. Indeed, this is conceded with reference to that portion of the Agricultural Income Tax which is relatable to the earlier Act of 1947. To treat the additional portion thereof which arises from the later Act of 1950, as confiscatory in nature, appears to me, with great respect, to be based on misconception and is to confuse a fact for a function. The Agricultural Income Tax of the previous year when brought into the scheme of Estates Abolition for purposes of calculation of compensation, does not function as a tax, but merely as a deduction from the gross income, being an outgoing therefrom, already validly incurred. The deduction from the gross income is not by the present function or operation of the taxing machinery but by the pre-existing fact of a legitimate deduction by way of the agricultural Income Tax which has already operated. Nor is there any intelligible principle on which it can be said that when the agricultural Income Tax of the previous year was levied the levy itself operated as a principle of prospective confiscation, merely because, it was likely or intended to be used as a deduction. The point of the distinction is that you cannot call taxation as disguised confiscation unless the confiscation is the result of, and arises from the very operation of functioning of the taxation. I am, therefore, quite clear in my mind that neither the Agricultural Income Tax, when levied in the previous year, nor the deduction in respect thereof when taken into

account for purposes of compensation, can be said to be confiscatory. I am, therefore, unable to treat the situation arising from the inter-play of these two legislative provisions -- even assuming that there was a scheme behind it -- as being a legislative machinery for confiscation in the guise of taxation.

67. In the alternative, it was suggested that the Agricultural Income Tax Amendment Act of 1950 itself right from its inception, is invalid inasmuch as the particular measure was not a genuine measure of taxation, but that it was intended for the fraudulent purpose of deflating compensation by its importation into the prospective Estates Abolition Legislation. As has been pointed out above, the alleged purpose cannot make the tax any the less valid and operative as a tax, unless the very taxation in its operation and function is confiscatory. It was clearly not so when it was passed, nor can it be treated as such when the Estates Abolition Scheme is brought into operation, as already explained above. I am, therefore, clearly of the opinion, having regard to all the above reasons, that the contention very strenuously put forward before us that; (1) The Agricultural Income Tax Amendment Act, 1950; and (2) The provisions in the Estates Abolition Act importing into it the Agricultural Income Tax as amended in 1950, as a deduction; or either of them or both together, are invalid on account of their being a fraudulent legislative scheme, is unsustainable.

67a. Though I have dealt with the legal aspect of the alleged fraudulent scheme at length, in view of the strenuous contentions raised in this behalf, I have no doubt in my mind, as already fully explained earlier, that from the constitutional point of view, no such fraudulent purpose as is attributed to the Legislature when it passed the Agricultural Income Tax Amendment Act of 1950, can be held to have been proved, and this itself, would be enough to repel the contentions of the petitioners in this behalf.

68. The last, question that remains to be considered is, that which has been raised with reference to the validity of certain provisions in the Madras Estates Land (Orissa) Amendment Act (Orissa Act, 19 of 1947), and the validity of certain steps taken by the Provincial Government in pursuance thereof, in so far as they affect the calculation of gross assets for purposes of compensation payable under the "Estates Abolition Act. This objection is one that is available only in respect of the estates in the ex-Madras area of Orissa. It has been raised in 5 out of the 8 applications now under consideration by us. They are O. J. C. 14 relating to the estates of Khallikote, Athagarh and Biridi; O. J. C. 25 relating to the estate of Chikati, and O. J. C. 26 relating to the estate of Chikati; and O. J. C. 28 relating to the estate of Dwaragaon. It may be mentioned that so far as the estates of Khallikote, Atha-garh and Biridi are concerned, the petitioner therein, with a view to draw special attention of the Court to the point thus raised, has also filed an independent application. O. J. C. 59 of 1952, in the course of hearing of these applications.

69. The objection raised is with reference to Sections 6 and 9 of Orissa Act, 19 of 1947. By Section 6, a new Section 168-A has been inserted in the Madras

Estates Land Act. and by Section 9, a new Sub-section (2) has been added to Section 177 of the said Act. u/s 168(1-A) of the Madras Estates Land Act prior to this amendment, the Provincial Government may at any time direct the Collector to settle a fair and equitable rent in respect of the land situated in any village or area for which a final record of rights has been published separately u/s 166. The new Section 168-A is as follows:

"168-A (1): Notwithstanding anything contained in this Act, the Provincial Government may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare or that the rates of rent payable in money or in kind whether commuted, settled or otherwise fixed, are unfair or inequitable, invest Collector with the following powers:

(a) Power to settle fair and equitable rents in cash;

(b) Power, when settling rents to reduce rents if in the opinion of the Collector the continuance of the existing rents would on any ground, whether specified in this Act or not, be unfair and inequitable.

(2) The power given under this section may be made exercisable within specified areas either generally or with reference to specified case or class of cases."

Similarly, Section 177, Madras Estates Land Act, as it previously stood, provided that:

"When any rent is settled under Chapter II of the said Act, the settlement is to take effect from the beginning of the revenue year next after the date of the sanction by the confirming authority under Sub-section (2) of Section 170."

By the 1947 Act, the pre-existing S. 177 is numbered as Section 177(1) and the following Sub-section (2) has been added:

"Section 2(a). -- Notwithstanding anything in sub-s. (1) where rent is settled under the provisions of Section 168-A the Provincial Government may either retrospectively or prospectively prescribe the date on which such settlement shall take effect. In giving retrospective effect the Provincial Government may, at their discretion, direct that the rent so settled shall take effect from a date prior to the commencement of the Madras Estates Land (Orissa Amendment) Act, 1947."

Sub-section 2(b) provides that where the Provincial Government gives retrospective effect to the settlement, the excess payment if any, made by the ryot since the date of the notification, shall be recovered at the option of the ryot.

70. The main objection to both these new provisions is that these provisions operate by way of delegation of legislative power to the Provincial Government and are of an arbitrary and discriminatory character and therefore invalid. In support of this contention, a recent case in -- "In re Constitution of India and Delhi Laws Act (1912) Etc.", AIR 1951 SC 332 (223), has been relied upon. The argument put forward is as follows: The rents payable by a raiyat to the

zamindar is a matter that is determined by the pre-existing law. Any alteration of such rents can only be done by the exercise of legislative function. Therefore, the authority vested in the Provincial Government under these two new statutory provisions, i.e., Section 168-A and Section 177(2) are in their "effect and substance" the delegation of legislative authority to the Provincial Government. The authority so given is without the fixation of any standards with reference to which such authority is to be exercised by the Provincial Government. It is accordingly urged that they are invalid. The rent case in -- Bhushan Lal Vs. State, , has been relied on to show how exactly the above-mentioned decision of the Supreme Court relating to permissible limits of delegation of legislative functions has been understood and applied. It appears to me, however, that the whole of this argument is put forward under a misconception of what amounts to delegation of legislative function. It may be true that the authority to vary the pre-existing rents by the process of a settlement proceeding is one that can be granted only by the exercise of the legislative function by the Legislature. But that authority has been conferred in this case by the Legislature itself under the pre-existing Section 168(1-A), taken with the new Section 168-A. Once that authority has been given by the Legislature to the Provincial Government, the exercise of that authority by the said Government is merely in the nature of an executive function, and not the exercise of any further legislative function. What is brought about by the new Section 168-A or Sub-section (2) of Section 177, is the vesting in the Provincial Government, the further power to vest certain specified powers in the Collector and also to determine the date from which the settlement effected by the combined operation of Section 163(1)(A) and Section 168(A) are to take effect. The authority so vested in the Provincial Government under these two sections is, to my mind, clearly an executive authority and not a legislative function. The difference between a legislative function and an executive function is that the former is concerned with the making of a rule of a general or limited application, while the latter is concerned with the carrying out of it directly or through some authorised instrumentality with reference to the rules so enacted. In this view, therefore, it appears to me unnecessary to consider the somewhat elaborate argument that has been addressed to persuade us that the two sections amount to invalid delegation of legislative authority, to the Provincial Government. But even if it be assumed that what is done under these two impugned provisions is the delegation of legislative function, there is, to my mind, no doubt that it comes well within the limits of valid delegation as laid down in "AIR 1951 SC 332 (223)", as understood and explained in Bhushan Lal Vs. State, ". In the view of the Allahabad Full Bench (in para. 21 of their judgment) the correct view of the Supreme Court judgment in " AIR 1951 SC 332 (223)" is that if the impugned statutory provision is the delegation of legislation in respect of a particular subject, or if it be a delegation which lays down a policy or standard for the guidance of the delegatee such delegation is valid. It has always been held even in America

"that the Constitution has never been regarded as denying to the Congress

(Legislature) the necessary resources of flexibility and practicability which will enable it to perform its function in laying down policies and establishing standards while leaving to selected instrumentalities, the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply."

In this view, the present impugned provisions would clearly be valid, because they deal only with a particular subject, viz., the "settlement of rents and there is a guiding standard laid down, viz., "interests of. public order or of local welfare or the rates of rent are unfair or inequitable." -- a standard which for legislative purposes must be taken to be sufficiently defined. I am, therefore, clearly of the opinion, that there is no substance in the argument advanced before us on the assumption that the two amending provisions are in the nature of invalid delegation of legislative function granted to the Provincial Government.

71. The next argument that has been advanced is that even on the view that what is granted to the Provincial Government under the two sections is an executive and not a legislative function, the provisions in this behalf are hit by the principle laid down by the Supreme Court in its judgment in -- *The State of West Bengal Vs. Anwar Ali Sarkar*, The principle emerging from the majority view in that case has been restated by his Lordship Mahajan J. as follows in the later case in -- *Kathi Raning Rawat Vs. The State of Saurashtra*, :

"Even if a statute on the face of it was not discriminatory, but if it was so in its effect and operation, inasmuch as it vested in the executive Government unregulated official discretion, such a statute has to be adjudged unconstitutional."

(See also -- "*Balakrishnan v. State of Madras*", AIR 1952 Mad 565 (Z27). It is suggested that with reference to this test, both the new "provisions, Section 168-A and Section 177(2), are illegal and unconstitutional. It is pointed out that the power vested in the Provincial Government u/s 168-A is: (1) a power exercisable within specified areas generally, or with reference to specified case or class of cases; as also (2) a power to authorise the Collector, while settling rents, to reduce the rent on any ground whether specified or not, or to settle fair and equitable rent and that this is vague and undefined in character. I am, however, unable to agree that the authority so vested in the Provincial Government can be assumed in law to be unregulated and arbitrary. The authority vested in the Provincial Government is to be exercised not at its own arbitrary discretion, but only

"on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or the local welfare or that the rates of rent payable in money or in kind whether commuted, settled or otherwise fixed are unfair or inequitable."

In fact, this is not any discretionary authority to be exercised on certain specified standards. It may be that those standards are not capable of more precise definition, and that the condition for the exercise of the authority is the

subjective satisfaction of the Provincial Government itself. But unless We assume an abuse of the authority vested in it by the Provincial Government (which we are not entitled to do), it cannot at all be said that the terms in which the authority has been granted are either arbitrary or discriminatory. These considerations apply both to Sub-section (1) and Sub-section (2) of Section 168-A. The further contention that the very standard prescribed for the Provincial Government, viz., that of the pre-existing rents being unfair and inequitable, or the very authority to vest the Collector with certain powers, viz., the power to settle a fair and equitable rent in cash or when settling the rents to reduce the same, if in the opinion of the Collector the pre-existing rents are unfair and inequitable on grounds whether specified or not, are by themselves also arbitrary and discriminatory, is equally unsustainable. It is well-recognized that what is "fair and equitable" rent and what rents are "unfair and inequitable" are matters which are not capable of accurate definition or exhaustive factorisation. Various Central and Provincial Statutes regulating fixation of rents, as well as numberless decisions of Courts have throughout recognized this feature as regards fixation or determination of rents. As early as in 1865 the judgments of the various Judges of the Full Bench in --"Thakoorance Dossee v. Bisheshwar Mookerjee", 3 W. R. Act, X, Rul-29 (Z28), in what is commonly known as the "Great Rent Case" shows the difficulty in clearly defining what "fair and equitable" rent is, and recognized that it depends upon various factors which cannot be exhaustively analysed. In this context, it is very instructive to refer to certain portions of the judgments of the Full Bench of the Madras High Court reported in --"Rajah of Mandasa v. Jagannayakulu", AIR 1932 Mad. 612 (Z29). In particular, the judgment of Mr, Justice Reilly who became a Judge of the High Court, at p 634, describes the nature of the settlement operation wherein it is shown clearly that various undefinable factors must necessarily enter into consideration when fixing fair and equitable rents. Anatha Krishna Ayyar J. also at p. 641 of the report refers to it in his judgment in an instructive observation in the following terms :

"In fact, very much is left to the executive and revenue experience of the officer concerned in determining what is to be the "fair and equitable" rent." His Lordship points out that "while the settlement officer shall have regard to the provisions of the Act in determining the rates of rent payable by a ryot, he is entitled to travel outside the provisions of Sections 30, 38, and 40." Further on, His Lordship says at p. 642 that the "revenue officer settling rents under Chapter II is not bound by any such restrictions. His hands are more free to do what he considers to be the justice of the case. He is the best Judge of economic facts under the Chapter."

The correctness of this description as to the function of the settlement officer has been recognized by the Privy Council in their decision reported in -- AIR 1943 164 (Privy Council) wherein at p. 180, their Lordships refer with approval, to the views of Reilly and Anatha Krishna Ayyar JJ. (The references therein are to the equivalent report, viz., " AIR 1932 Mad 612 (Z29)". In fact, even the various provisions in the Madras Estates Land Act in Sections 30, 38, and 40 which

purport to specify the considerations which are to guide the Revenue Officers in applications thereunder, show that the ultimate limiting factors are "fair and equitable" or "unfair and inequitable" (See Sections 35, 38(2) and 40). There, can be no doubt, therefore, that the standard of what is "fair and equitable rent" and what is unfair and inequitable rent" though incapable of further and more precise definition, is, for legal purposes, a definite standard. It cannot be assumed to give scope for arbitrary exercise of discretion, but it is something which is determined by what may be called "revenue and settlement experience" and is open to correction by prescribed higher authorities, with larger experience in the same direction. Indeed, it is not only in matters relating to rents, but also in respect of various other conceptions like prices, damages, etc., that words like fair, reasonable, equitable, etc., import definite, though not precisely definable standards. I am, therefore, clear that Section 168-A is not open to the objection that it vests in the Provincial Government or in the executive officers any arbitrary and discriminatory powers.

72. As regards the similar arguments with reference to the new Sub-section (2) of Section 177, I am inclined to think, though not without some hesitation, that the same considerations must apply. There can be no doubt that the same standards of what is unfair and inequitable and the other considerations which are referred to in Section 168-A are meant to guide the exercise of the powers u/s 177(2) also as is clear from the fact that the power of the Provincial Government to fix the date is with reference to "such" settlement which, means the settlement u/s 168-A thereby importing all the guiding and limiting factors of Section 168-A. I felt some hesitation whether these limiting factors would be enough to guide the judgment of the concerned authorities in differentiating between cases where prospective dates or retrospective dates are to be fixed, particularly in view of the fact that the power to fix a retrospective date involves interference with certain vested interests necessitating adjustment or refund. On the whole, however, I am inclined to think that there may well be different degrees of unfair and inequitable rates and circumstances relating to the prevalence thereof, which may furnish a proper guidance for the exercise of the power u/s 177(2) without the same becoming arbitrary or discriminatory. I would, therefore, hold that the two impugned sections are not open to objection as regards their validity either on the ground of their being invalid delegated legislation or on the ground of their purporting to vest in the Provincial Government or the Collector arbitrary or discriminatory powers. The contentions in this behalf are accordingly overruled.

73. The next objection that is taken is that apart from the validity of these statutory provisions above considered, the Provincial Government and the Collector have in fact exercised their powers arbitrarily and in a manner whose operation is discriminatory. It is particularly alleged that the powers given to the Provincial Government under the above two sections have been deliberately invoked and exercised with the mala fide object of drastically reducing the rents in respect of the relevant previous year in anticipation of the Estates Abolition

Scheme so as to bring about a substantial reduction in the compensation payable on the abolition of the estates. As regards this argument, there are three distinct steps in the process of settlement which are challenged in each case as being mala fide, and they are :

1. The notification directing settlement in, respect of each estate or part of estate.
2. The process of settling rents.
3. The fixation of the date from when the settled rents are to come into force.

A tabular statement has been furnished by the Advocate-General showing the dates of the various steps taken. A perusal of that statement shows that in most instances the settlement operations were directed long before the new Constitution came into force, and So far as the rest are concerned, excepting in two instances, before the Estates Abolition Act came into operation. It would, prima facie, be difficult to maintain that the notifications so issued even before the new Constitution came into force or the Estates Abolition Act came into operation, was a mala fide abuse of the power vested in the Provincial Government for deflating compensation. However in some of these cases, a good deal of material has been placed on the record with a view to persuade us that the notifications issued, particularly, as regards Khallikote, Athagarh and Biridi, estates are mala fide. This material requires closer examination. As regards the notifications u/s 177(2) fixing the dates when the settlements are to come into operation, a good number of the notifications have been issued before the Estates Abolition Act came into force. Only a few of the notifications have been issued after the Estates Abolition Act also came into force. But every one of them has been issued subsequent to the introduction of the Estate Abolition Bill, in the Orissa Legislature. In respect of the estates of Khallikote and" Athagarh, the rent-settlement operations appear to be still pending and no notifications u/s 177(2) appear to have been issued. Again, the dates fixed for the operation of the settled rents in all the above notifications appear to be retrospective and not prospective. Further, so far as the actual settlement proceedings are concerned, quite a number of vitiating factors are alleged, but almost all of them are matters which can properly arise only before a regular appellate authority. But there is one circumstance, which has emerged in the course of the arguments on the basis of certain affidavits filed on the side of the Government, viz., that the Settlement Officers received instructions from the Government to settle rents so as to bring them to the level of neighbouring raiyatwari rents plus 25 per cent. This feature was noticed for the first time "in the reply stage of the arguments, and it was then contended that the power to settle rents vested in the Collector under the Act, could not be controlled by such executive instructions, but only by the rules framed under the rule-making-power of the Government, it is urged that the rents so settled are in the nature of command-performance, and hence illegal. This argument, having been raised in the reply stage should have, in the normal course, been overruled by us. But it arises on an affidavit filed in O.,T.C.

14/52 on behalf of the Government itself, and we cannot ignore it or brush it aside without giving due opportunity to both sides to argue the matter fully. In these circumstances, the course we consider most convenient to adopt is to reserve these questions relating to the validity of the actual exercise of the powers vested in the State Government and in the Collector u/s 168-A and Section 177(2) for further arguments and consideration, on fresh applications being filed by the petitioners concerned raising these questions Specifically.

74. Having concluded the consideration of the various points raised at the hearing of these applications, it is desirable to summarise the conclusions we have reached which are as follows :

1. The Orissa Estates Abolition Act, (Orissa Act I of 1952), taken in its wholesale aspect, is valid and not open to any of the constitutional objections raised thereto.

2. The acquisition under the said Act of various individual items thereof, viz., private lands, personal service inams, waste lands, forests, etc. is also valid.

3. The acquisition of buildings situated within the ambit of the estate is valid in so far as such buildings are primarily office and estate buildings, in possession of the intermediary by the date of the vesting. The validity of the vesting of buildings other than office and estate buildings in so far as it may result from the relevant provisions of the Act, is left open, including buildings which may have been used as office buildings, or estate buildings, but are primarily homesteads or personal buildings (in the sense in which they have been so referred to in this judgment).

4. The validity of the following provisions viz., Sections 5(i), 6(2), 6(3), and Section 7(2) is left open to be raised by the appropriate persons at the appropriate stage.

5. Both the Orissa Agricultural Income Tax (Second Amendment) Act of 1950, (Orissa Act, 15 of 1950), and Section 27(l)(b) of the Orissa Estates Abolition Act of 1952, providing for deduction of Agricultural Income Tax from gross assets are individually as well as taken together valid, and not open to any constitutional objections.

6. Section 168-A and Section 177(2) inserted into the Madras Estates Land Act by the Amending Act, Orissa Act, 19 of 1947, are valid and not open to any constitutional objections. But the question as regards the validity of the actual exercise of the powers thereunder is left open and will be considered on fresh applications being filed by the petitioners raising these points.

75. The petitioner in O.J.C, 15/52 need not file a fresh application, since there is already pending on his behalf O.J.C. 59/52, and he is permitted to amend it by raising such additional grounds as may be necessary within a week. This will be treated as having been disposed of to the extent covered by the present judgment, and will be posted for further hearing at an early date. The other

petitioners may file fresh applications as above indicated within a week and they will be taken up along with O.J.C. 59/52.

76. In the result, all the applications viz., O.J.C. Nos. 13, 14, 15, 16, 25, 26, 27 and 28 of 1952, are dismissed, but in the circumstances, and having regard to the important questions raised on these applications, which stood in need of judicial scrutiny, there will be no order as to costs.

77. Since all these applications involve substantial questions of law as to the interpretation of the Constitution, the petitioners are entitled to the grant of leave to appeal to the Supreme Court, under Article 132(1) of the Constitution. The requisite certificates will accordingly issue in these cases.

Narasimham, J.

78. I have carefully read the exhaustive judgment of My Lord the Chief Justice, and I am in agreement with his views on most of the questions raised by the learned counsel for the petitioners. As regards the validity of the Orissa Agricultural Income Tax (Second Amendment) Act, 1950 (Orissa Act, 15 of 1950) (hereinafter referred to as the enhanced Agricultural Income Tax Act), though I do not wish to express dissent from the view taken by my Lord, I think it necessary to point out that there are many suspicious features in that Act which lend considerable support to the argument of the learned counsel that the said Act was not a genuine taxing statute but a colourable device for the purpose of reducing the net Income of the intermediaries so that the compensation payable to them under the Orissa Estates Abolition Act may be reduced to a grossly inadequate sum.

79. The doctrine of colourable legislation is well-known. In "(1899) A.C. 628 (29)", the Privy Council reiterated the familiar principle that "you cannot do that indirectly which you are prohibited from doing directly". Legislatures functioning under written Constitutions are subject to the limitations imposed by the Constitutions and when a statute is challenged as unconstitutional, it is one of the important functions of the Courts to decide whether by a colourable device the Legislature transgressed its constitutional limitations. No Legislature or draftsman would be so ingenuous as to reveal either in the Statement of Objects and Reasons of a Bill or in the provisions of the Bill itself its design to transgress the limits imposed by the Constitution or to evade some constitutional safeguards. As pointed out by Evatt, J. in "61 C. L. R. 735 at p. 785 (27)", : "Parliamentary draftsman would naturally shrink from so open a defiance of Constitutional requirements." A Court must be blind indeed if it looks merely at the language of a statute- and ignores its obvious purpose, effect and operation. Hence, when, a statute is impugned as being a mere colourable device to evade constitutional provisions, the Court is required to scrutinise in its entirety, the impugned statute as well as other Bills or Acts which may form part of a scheme for such evasion, for the purpose of ascertaining "the true nature and character" or "pith and substance" of the impugned statute. Sometimes, it may so happen

that statute, when considered independently, may be free from any objection but if it could be shown that it is part of a general scheme on the part of the Legislature, by a series of Acts to achieve an object which it could not validly achieve in one piece of legislation, the statute would also be struck down as unconstitutional. Several Privy Council decisions arising from Canada and Australia have laid down these principles so clearly that it is unnecessary to refer to them in detail. I would, therefore, content myself with citing "(1924) A.C. 323(Z10)"; "(1932) A.C. 41(214)"; "(1939) A.C. 117(Z16)"; "(1940) A.C. 838 (Z13)", and (Attorney General for Canada v. Attorney General for the Province of Quebec", (1947) A.C. 33(Z31). In Canada and Australia the legislative field of the State Legislatures on the one hand and the Dominion of Commonwealth Legislatures on the other, has been laid down in the Constitutions and in applying the doctrine of colourable legislation the sole question for consideration was whether under the guise of legislating on a subject within its own sphere, the Legislature was in substance invading a forbidden field. Thus, in "1939 A.C. 117(Z16)", the Privy Council held that a Provincial Bill of Alberta dealing with taxation of banks was, in substance, a piece of legislation affecting "banking" which was exclusively a dominion subject and consequently unconstitutional. In "(1924) A.C. 328 (Z10)", a piece of legislation of the Dominion Parliament of Canada was held to be invalid inasmuch as, in substance, it was a piece of legislation dealing with, a subject within the Provincial sphere.

80. American decisions also are to the same effect. Some of these have been referred to by my Lord and it is unnecessary to cite them in detail. I would only refer to -- "Guinn v. United States", (1914) 238 U S 347 (Z32) where a provision in the Oklahoma Constitution (known as the "grand father" clause) prescribing a literacy test for voting, but exempting from its operation all persons who were entitled to vote in 1866 or earlier and their lineal descendants, was declared unconstitutional, because in substance -- though not in form -- it discriminated against negroes. There is, however, one feature of the American Constitution which closely resembles the corresponding feature in the Indian Constitution, and somewhat distinguishes both of them from the Canadian and Australian Constitutions. Apart from the limitation arising out of the demarcation of the legislative fields of the various States, and the Congress the "due process clause" imposes a further limitation and an Act though within the legislative sphere either of the State or of the Congress may become unconstitutional if it offends the "due process clause." In India too, the fundamental rights impose a similar restriction on the legislative power both of the Union Parliament and the State Legislatures.

81. Taxing statutes form no exception to the general principle of colourable legislation. But as taxing power is essential to the very existence of a State, Courts have shown considerable reluctance in pronouncing a taxing statute to be unconstitutional unless there is clear and cogent evidence to show that the statute was primarily enacted for an unlawful and unconstitutional purpose. But where such evidence was available, Courts have not hesitated to declare such

statutes to be unconstitutional even though they might have been in operation for sometime and some tax might have been collected for the revenue purposes of a State. Thus, in "(1932) A C 41 (214)", the Privy Council had no hesitation in pronouncing sections 16, 20 and 21 of the Special War Revenue Act of Canada (a purely taxing Statute) to be invalid because the tax as imposed under those provisions was linked up with an unlawful object, viz., the enforcing of some provisions of the Insurance Act of Canada which were held to be unconstitutional. In the well-known "Alberta case", (1939) A C 117 (Z16), the taxing statute in question "An Act respecting the taxation of banks" was held to be unconstitutional because in its essence it was not a taxation measure at all but was merely part of a legislative plan to prevent the operation within the province of banking institutions brought into existence by the Dominion Parliament. Doubtless in these two decisions, the validity of the measures came up for the consideration of the Court in its advisory jurisdiction, prior to their becoming law of the land. But the reasons for which they were declared invalid would have applied with equal force even if they had been enacted and had been in operation for some time. In the well-known Barger's case of Australia --"The King v. Barger", 6 C L R 41 (Z33) the majority of Judges held that the Excise Tariff, 1906, which purported to impose duties of excise on agricultural implements was, in substance, not an Act passed in exercise of the powers of taxation conferred by the Constitution, but was an Act to regulate the conditions of manufacture of agricultural implements and as such invalid under the provisions of the Australian Constitution. This decision was cited with approval by the Privy Council in "(1940) A C 838 (Z13).

82. The American decisions on taxing statutes are also to the same effect. If the primary purpose of the statute is to raise revenue for the purpose of the State, collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial enquiry "(1904) 195 U S 27 at pp. 56-59 (Z17)", but if the taxing statute is so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect the direct exertion of a different and forbidden power as for example, the confiscation of property, it may be held to be invalid. (See -- "Norwood v. Baker", (1898) 172 U S 269 "(Z34)). The case has special significance in the present discussions because there it was held that taxing power was misused for the unlawful purpose of taking away private property without compensation. The scope of enquiry by the Court is not the motive of the legislature, but whether the necessary interpretation and effect of the statute be such as to plainly demonstrate that the form of taxation was adopted as a mere disguise under which there was exercised in reality another and different power denied by the Constitution to the State. In "(1937) 81 LEd 772 at p. 776 (Z21)", there is an annotation of the use of Federal taxing power for ulterior purposes and a full review of the entire case law on the subject. I would also refer in this connection to Dodd's cases on Constitutional Law, 4th Edition, pp. 1050 to 1054.

83. Under the Indian Constitution, the distribution of Legislature and the Union Parliament is found in the three Lists of the Seventh Schedule read with Articles 245 to 255. In addition, Article 303 imposes further restrictions on legislative powers of both those bodies. The provisions of Part III dealing with Fundamental Rights impose further limitations on their legislative power. The constitutional validity of an Act can, therefore, be challenged either on the ground that the statute contravenes the fundamental rights guaranteed by the Constitution or else that it is beyond the competence of the Legislature as set out in the various lists of the Seventh Schedule or as offending some other provisions of the Constitution. Another line of attack has been revealed by the majority judgment in the recent decision of the Supreme Court of India *The State of Bihar Vs. Sir Kameshwar Singh*, ". There it was held by a majority that even though an enactment may appear to have been passed in exercise of the legislative power conferred by Entry 42 of List III of the Seventh Schedule if it is found to be a fraud on that entry the enactment would be unconstitutional even though by virtue of Clause (4) of Article 31 read with Articles 31A and 31B the validity of the enactment cannot be challenged on the ground that it infringes the fundamental rights guaranteed in Part III.

84. Though the principles are thus well settled their application is a matter of considerable difficulty and in scrutinising an impugned statute to find out whether it is a colourable device, the Court must carefully guard itself against questioning the wisdom of the Legislature of the policy as embodied in the Statute. The line between adjudication on policy and adjudication on validity of a piece of legislation is sometimes so thin that disagreement amongst members of the Court has been not infrequently noticed in several American and Australian cases already referred to. The recent judgment of the Supreme Court in *The State of Bihar Vs. Sir Kameshwar Singh*, , is also an illustration of the sharp difference between the majority view and the minority view.

85. The nature of the evidence that is admissible for enabling a Court to find out whether a Statute is a colourable device to evade constitutional safeguards has been laid down by the Privy Council in "(1939) A C 117 at p. 130 (Z16)", and some other decisions. These have been collected and arranged in the dissentient judgment of Evatt, J. in "61 C. L. Rule 735 at p. 785 (Z7)" and it would be helpful to quote his words:

"(i) The Court may have to examine the operation and effect of the impugned legislation. For that purpose evidence may be admissible. "(1939) A C 117 at p. 130 (Z16).

(ii) For the same purpose, the Court "must take into account any public general knowledge of which the Court would take judicial notice." "(1939) A C 117 at p. 130 (Z16)".

(iii) The Court may consider other Acts passed by the Legislature whose enactment is being questioned. "(1939) A C 117 at p. 130 (Z16)".

(iv) In determining "the object or purpose of the Act in question" the Court must consider "matters of which the Court would take judicial notice...and other evidence in a case which calls for it". "(1939) A C 117 at pp. 130-131 (Z16).

(v) It is legitimate to look at legislative history "as leading up to the measure in question" in order to determine whether the measure "instead of being in any true sense" in furtherance of a permitted purpose is "part of a legislative plan" to carry out a purpose which is not permitted "(1939) A C 117 at pp. 132, 133 (Z18)".

(vi) In order to ascertain "the object and effect" of the Acts which are "part of a general scheme of legislation" it is proper to "look at the history of the legislation passed in furtherance of the general design" "(1938) 2 D L R (Can) 81 at p. 83 (Z35)".

(vii) In applying the doctrine of general knowledge the Court's "duty as Judges" may be "to take judicial notice of facts which are known to intelligent persons generally" and to reject suggested arguments if they "would be incontinently rejected by anybody possessing the most rudimentary acquaintance with affairs." "(1938) 2 D L R 81 at p. 103 (Z35).

86. Speeches of individual members of the Legislature during the passage of the impugned Bill would have little evidential weight in ascertaining the true object or purpose of an impugned Act (1939) A C 117 at p. 131 (Z16)). But in that case the Privy Council did not say that the speeches would be inadmissible altogether. Where the bona fide of a piece of legislation is challenged the speeches of members of the Government who are responsible for the passage of the Bill through the Legislature, may have some value especially as regards legislative history leading up to the measure in question and its close connection with other contemporary pieces of legislation. It is true that in "(1940) A C 838 at p. 849 (Z13)", the Privy Council sounded a note of caution against confusing between the true intent and purpose of an Act and the intentions of the members of the Parliament or the Members of the Government responsible for passing that measure. In that case, however, the fact that the several impugned Acts were part of one legislative scheme, was admitted and was obvious from the Preamble to the main Act. But where, as in this case, the State has stoutly denied that the enhanced Agricultural Income Tax Act was part of a legislative plan along with the Orissa Estates Abolition Act, the speeches of the Ministers responsible for piloting both the Bills in the Legislature, have some value. We have been supplied with official reports of the proceedings of the Orissa Legislative Assembly during the passage of both the aforesaid Statutes and those reports are admissible as public documents u/s 78(2) of the Evidence Act. In -- "South Australia v. The Commonwealth", 65 C. L. R 373 at p. 410 (Z36), the High Court of Australia while holding that reports and speeches in Parliament were generally inadmissible, recognized that the legal position may be different if the bona fides of the Parliament or the Crown in Parliament can be and are challenged.

87. The validity of the Orissa Agricultural Income Tax (Second Amendment) Act, 1950, was challenged on two important grounds, viz.:

(i) It is not a bona fide taxation statute, but a statute passed with the fraudulent design of reducing the net income of the intermediaries so that they may be deprived of just compensation. It is, therefore, hit by Article 31(2) and it is not saved by Clause (4) of that Article inasmuch as the Bill dealing with the subject, was not pending on the date of the commencement of the Constitution, nor, did it receive the assent of the President. It is also not saved by Article 31A inasmuch as it is not a law providing for the acquisition of an estate and in any case it was not assented to by the President.

(ii) Though the impugned Act is claimed to have been passed in exercise of the power conferred by Entry No. 46, of List II, it is a fraudulent exercise of the power under that entry for an unlawful purpose and is therefore invalid for reasons which are identical with those which weighed with the majority of the Judges of the Supreme Court in pronouncing Section 23(f), Bihar Land Reforms Act to be invalid, *The State of Bihar Vs. Sir Kameshwar Singh*, "

88. I may now trace the legislative history leading to the passing of the two Acts in question. The Congress Party came to power in Orissa sometime in April, 1946, and the then Prime Minister was Shri Harekrishna Mahatab. Shri N. K. Chaudhury was then the Revenue Minister. One of the avowed objects of the Party was the abolition of the zamindari system. But those two leaders of the Party appear to have held divergent views as to how the zamindari system should be abolished. These divergent views are reflected in the note given by Shri H. K. Mahatab and the note given by Shri N. K. Chaudhury which have been printed as Appendix II to the Report of the Land Revenue and Land Tenure Committee, Orissa (hereinafter referred to as the Chaudhury Committee's Report). Shri H. K. Mahatab was of the view that zamindars have proprietary right in their zamindaries and that there could be no question of acquisition of zamindaries without payment of due compensation. The financial resources of the Province were inadequate for such payment and he, therefore, advocated the suspension of the question of acquisition of zamindaries and suggested a scheme by which the zamindars should share the management of their estates with tenants. Shri N. K. Chaudhury, however, appears to have favoured the immediate deprivation of the zamindar's right of the management of their estates and the constitution of Anchal Sabhas providing for decentralization of land revenue administration. On 15-11-1946, the then Government appointed the said Committee presided over by Shri N. K. Chaudhury whose terms of reference included the question of elimination, as far as practicable, of all intermediary interests between the cultivators and the State. The Chairman and the majority of members of that Committee appear to have thought that the zamindars were merely rent-collectors with no proprietary interest in their estates, and that the British Government made a big mistake in recognizing them as proprietors at the time of making permanent settlement (See pp. 63 and 65 of the Chaudhury

Committee's Report). They, therefore, thought that by the elimination of the intermediaries there was no "acquisition of any property" and consequently no question of payment of compensation arose. But they recommended a liberal treatment of these excluded intermediaries on "purely political grounds". (See p. 66, para. 37), and suggested that Malikana allowance in perpetuity with nominal compensation so as to conform to the provisions of Section 299, Government of India Act, 1935, would suffice (see pp, 80 to 82). The report of the Committee was published on 7-7-1949, but Shri N. K. Choudhury had resigned from the Government in April, 1948, and was not in a position to initiate legislation for implementing the recommendations of that Committee. In the meantime other Provinces of India had taken up the question of acquisition of zamindaries by legislation and the Government of Orissa which was then being guided by Shri H. K. Mahatab had to make up their mind on the question and to initiate necessary legislation for that purpose. The doubt which, he felt about the legality of acquiring zamindaries without payment of adequate compensation and which was pointed out in his memorandum given to the Choudhury Committee (see Appendix II to the Report), was cleared up when the Constituent Assembly on 12-9-1949, passed Article 24 of the Draft Constitution (corresponding to Article 31 of the Constitution) taking away the jurisdiction of law Courts to question the legality of any Bill that was pending on the date of the commencement of the Constitution and subsequently assented to by the President (cl. (4) Article 31) on the ground that it did not provide for adequate compensation when property was acquired for public purposes. It is common knowledge that in the later part of 1949, all Governments knew that the Constitution would come into force on 26-1-1950. Those Governments which wanted to avail of the immunity from interference by law Court provided in Clause (4) of Article 31, introduced Bill for the abolition of zamindaries prior to 26-1-1950, so that those Bills may remain "pending Bills" for the purposes of Clause (4) of Article 31. These are the reasons which brought about the publication of the Orissa Estates Abolition Bill in the local Gazette on 3-1-1950, and its introduction in the Orissa Legislative Assembly on 17-1-1950, so as to obtain the benefit of Clause (4) of Article 31 of the Constitution. Doubtless, the Bill did not implement the suggestions of the Choudhury Committee's Report as regards payment of Malikana allowances and nominal compensation to the intermediaries and it was based on the provisions of similar Bills of other Provinces especially, Bihar and Madras. The Bill contained provisions for payment of some compensation -- though not adequate especially in respect of bigger zamindars -- but it was hoped that Clause (4) of Article 31 would save the Bill from challenge in law Courts on the ground of inadequacy of compensation. The Bill was in due course circulated for eliciting public opinion. A few months later Shri H. K. Mahtab became the Minister for Centre, and Shri N. K. Chaudhury became the Chief Minister of Orissa. A special session of the Assembly was summoned on 3-8-1950, in which a resolution, moved by the then Revenue Minister Shri Sadashiv Tripathy for referring the Bill to the Select Committee, was passed. A perusal of the official report of the Orissa Legislative Assembly of 3-8-1950, especially the speeches of the then Revenue Minister and

other members, indicates that notwithstanding the opposition of a few zamindars, the Party in power was very keen on expediting the passage of the Bill in the Assembly so that it might become law as soon as, possible. In fact, one of the Congress supporters, Shri Bhai-rab Chandra Mohanti, was so impatient with the delay of six months that had already taken place from the date of the introduction of the Bill (17-1-1950) that he wanted the Legislature to fix a date before which the Select Committee should submit its report so that before the budget session of the Assembly in 1951, the Bill may become law. The then Revenue Minister Shri Sadashiv Tripathi, however, did not accept the suggestion of fixing a date for the submission of the report of the Select Committee. But he definitely assured the House that as soon as the report of the Select Committee was received a special session of the Assembly would be summoned for passing the Bill into law. I find no indication in the proceedings of that day to suggest that in August 1950, either the Legislature or the Party-in-power thought that the passage of the Bill into law may take some years. Everybody (except of course the zamindars) seemed to have been anxious to place the Bill on the Statute Book as early as possible. As a matter of fact, however, due to some special reasons which are not apparent from the papers placed before us, the Bill was passed by the Orissa Legislature only on 28-9-1951 (more than a year later) and after having been reserved for the consideration of the President and having been assented to by him on 23-1-1952, became the law of" Orissa, on 9-2-1952.

89. As early as July, 1947, the Orissa Legislature had passed an Act known as the Orissa Agricultural Income Tax Act (Orissa Act, 24 of 1947) imposing a tax on agricultural incomes by adopting a progressive rate of taxation for higher slabs of income on the lines of the Indian Income Tax Act. The rate was, however, kept very low compared to the rate of Income Tax. A challenge to the validity of this Act, though somewhat faintly urged in the early stages of the argument, was rightly given up eventually. It is true that as early as 1946 the Party-in- power was considering the question of abolition of zamindari system. It is also true that the provisions of the Agricultural Income Tax Act would primarily affect the zamindars inasmuch as they form the bulk of those persons whose income is above the exemption limit; but the competence of the Orissa Legislature to tax agricultural income, was beyond question. Merely because the then Government contemplated the abolition of zamindaries on a future date, it could not be reasonably urged that an Act taxing "the zamindars was a mere colourable device to reduce their income so as to facilitate acquisition of zamindaries by payment of nominal compensation. The same argument would apply to other measures of tenancy reform that were passed by the Orissa Legislature prior to the date of introduction of the Orissa Estates Abolition Bill (17-1-1950), which had the effect of reducing the assets of the zamindars by reducing the rents payable by tenants and restricting their right to evict the tenants and to alienate or settle forest lands and waste lands in their estates, thus, Orissa Acts, 8 of 1947, 19 of 1947, 24 of 1947, 1 of 1948, 3 of 1948, and Act 2 of 1949, came

under this class.

90. But any Bill introduced in the Orissa Legislature after 17-1-1950, which has for its primary purpose the reduction of the income of the zamindars, would, *prima facie*, be open to suspicion that it is not a bona fide measure, but primarily intended to reduce the income of the zamindars for the purpose of estimating the compensation payable to them on the acquisition of their estates. This suspicion arises mainly from the fact that in the Orissa Estates Abolition Bill, the provision made for estimating the gross assets and the deductions from the gross assets so as to ascertain the net income of the zamindars (clauses 21 and 22) all relate to rents and other incomes received by them from, their tenants, the taxes and other dues which they are required to pay. One of the important items of deductions is Clause 22(l)(b) of the Bill (corresponding to Section 27(l)(b) of the Act) which is as follows:

"Any sum which was payable in respect of such estate as agricultural Income Tax in respect of any agricultural income derived from, such estate for the previous agricultural year."

Thus, if the Legislature desires to further reduce the inadequate compensation payable to a zamin-dar as provided in the Orissa Estates Abolition Bill the most obvious course is to pass another law amending the Agricultural Income Tax Act of 1947, and steeply enhancing the rate of assessment on the zamindars so that when the time for acquisition of their zamindari comes, the deduction may be so large as to further reduce the net income. The contention of the learned counsel for the petitioners is that this device was adopted when on 9-8-1950, the Orissa Legislature passed the Agricultural Income Tax (Amendment) Bill, 1950.

91. On 8-1-1950, another Bill known as the Orissa Agricultural Income Tax (Amendment) Bill, 1950, was published in the local Gazette under the signature of then Prime Minister Shri H. K. Mahtab. In the Statement of Objects and Reasons it was mentioned that the primary object of the Bill was to increase the revenues of the Province by enhancing the existing rate of Income Tax. The enhancement provided in this Bill was somewhat moderate, the rate of tax on the highest slab of income being only annas four in the rupee for income above Rs. 20,000/- whereas under the Act of 1947, the rate on that slab was only annas three in the rupee. This Bill though introduced after the publication of the Orissa Estates Abolition Bill on 3-1-1950, appeared to be a genuine taxation measure, and was rightly not challenged as part of a scheme to reduce the income of the zamindars for the purpose of payment of compensation. For some reason or other, which is not clear, this Bill was dropped and a revised Bill was published in the Gazette on 22-7-1950, and passed into an Act on 10-8-1950. This Bill was introduced and piloted through the Legislature by Shri N. K. Chaudhury who had by then succeeded Shri H. K. Mahtab as Chief Minister. Shri N. K. Chaudhury's extreme views on the question of the proprietary right of the zamindars, and the payment of Malikana allowance and nominal compensation when they are divested of their management of estates have been fully disclosed

in his own report already referred to. In his speech in the Legislature he told the members of the Assembly that he had not changed his views at all. The revised Agricultural Income Tax (Amendment) Bill contained some remarkable features. The change in the rate of taxation was made very steep and drastic for slabs of income above Rs. 15,000/- for the highest slab the rate was raised to Rs. 0-12-6 in the rupee. In the Statement of Objects and Reasons, it was stated that the enhancement of the agricultural Income Tax was necessitated for financing various development schemes. But this statement can hardly carry any conviction even to the most gullible person for the simple reason that the persons who would primarily be affected by the enhanced rate of agricultural Income Tax are none else but the intermediaries and seven days before the passage of this Bill in the Orissa Assembly, the same Assembly had referred to the Select Committee the Orissa Estates Abolition Bill which when passed into law, would eliminate the intermediaries altogether. It is difficult to accept at its full face value the Statement of Objects and Reasons about the enhanced agricultural Income Tax being required for development purposes, when the Legislature had already definitely decided to extinguish the very class of persons who were required to pay the enhanced tax. The learned counsel for the petitioners therefore urged, with great emphasis, that the enhanced Agricultural Income Tax Bill though ostensibly a taxation measure, was, in substance, nothing else but a colourable device to drastically cut down the income of the intermediaries so as to facilitate further reduction of their net income as provided in Clause (b) of Section 27(1), Orissa Estates Abolition Act. Support for this argument is sought for in the following passage in the judgment of Mahajan J. in -- The State of Bihar Vs. Sir Kameshwar Singh, :

"Lastly it was urged that the legislation in question was not enacted bona fide inasmuch as in 1946, the Legislature having passed a resolution to end zamindaries, proceeded to enact laws with the purpose of defeating the constitutional guarantees regarding payment of compensation by various devices. As a first step in this direction, the revenue was enhanced in order to reduce the gross income of the zamindars, then other Acts mentioned in the earlier part of the main judgment were enacted with the same end in view. In my opinion, this argument is void of force. It was within the competence of the Government in exercise of its governmental power to enhance land revenue, to withdraw exemption of land revenue, wherever those had been granted, and to enact other laws of a similar character. "There is no evidence whatsoever that all these enactments were enacted with a fraudulent design of defeating the provisions of payment of compensation contained in the Constitution." The Constitution had not even come into force by the time that most of these statutes were enacted."

The sentence underlined (here single quoted) has been specially relied upon and it was urged that inasmuch as the enhanced Agricultural Income Tax Act was passed after the Constitution came into force and as the other pieces of evidence indicate that it was enacted with a fraudulent design of defeating the provisions

for payment of compensation, it should be struck down as unconstitutional. It was rightly stressed that as the Congress Party commanded an absolute majority in the Legislature in 1950, the view of the Party-in-power became for all practical purposes, the view of the Legislature, and that the Government did not worry in the least as to whether the enhanced tax would ever be realised from the intermediaries. So long as the enhanced tax was legally "payable" by them in consequence of the change in the law it would operate as a valid deduction u/s 27(l)(b), Orissa Estates Abolition Act and would serve the fraudulent design.

92. On the other hand, on behalf of the State of Orissa, the Advocate-General contended that the enhanced Agricultural Income Tax Act was a bona fide taxing measure meant to raise the rate of agricultural Income Tax to the same level as that prevailing in the Indian Income Tax Act and that it had nothing to do with the Bill dealing with the acquisition of zamindaries. It was also urged that no adverse inference should be drawn from the mere fact that the enhanced Agricultural Income Tax Bill passed through the Legislature a few days after the Legislature had decided to refer the Orissa Estates Abolition Bill to the Select Committee.

93. I have already referred to the history of legislation dealing with the Orissa Estates Abolition Bill and the enhanced Agricultural Income Tax Bill of 1950. It can be reasonably inferred that the Legislature was aware of the close connection between the two Bills. In view of Section 27(l)(b), Orissa Estates Abolition Bill it can be inferred that the Legislature knew that if agricultural Income Tax is suddenly enhanced at a steep rate the deduction from the gross assets of the intermediaries must also abnormally increase and the amount of compensation payable to the intermediaries would be further cut down. The Legislature also knew that as soon as the Orissa Estates Abolition Act is applied for elimination of the intermediaries, the additional income to the State from the enhanced Agricultural Income Tax Act would also be reduced almost to a nominal figure. This knowledge can be attributed to the Legislature from the following circumstances. In para. 15-of Chapter 4 at page 42 of the Choudhury Committee's Report there is an interesting discussion about the future of the Agricultural Income Tax Act when the scheme of land reform as recommended by the Committee is fully implemented. The Committee fully realised that

"the implementation of these recommendations will allow very few agricultural incomes to remain above the exemption limit. So the public exchequer is going to get practically nothing from that source in the new order."

The new order as recommended by the Committee consisted of the elimination of all intermediaries and the effective reduction of the size of the big holdings by statutory prohibition of sub-letting of lands and enforcement of a standard of cultivation. The Orissa Estates Abolition Bill implemented one of these recommendations, namely, the elimination of intermediaries. The Orissa Tenants Protection Act reduced the produce rent payable by actual cultivators to their immediate landlords and also gave them some temporary protection from

eviction even though their immediate landlord may be a raiyat and not an intermediary. These two Acts, therefore, though they may not result in the establishment of the new order as contemplated by the Choudhury Committee's Report in its fullest measure would make a substantial advance towards that order. It is also well known that though there may be a few big cultivators who may be liable to pay agricultural Income Tax for higher slabs of income, a substantial portion of the tax on higher slabs is paid only by the intermediaries. The speech of Shri N. K. Choudhury while moving the Orissa Agricultural Income Tax (Amendment) Bill in the Legislature is helpful in this connection. In answering a query from a member as to where was the necessity for the Orissa Agricultural Income Tax (Amendment) Bill of 1950 in view of the proposal for abolition of zamindaries, Shri N. K. Choudhury replied (in the language of the State of which the rendering in English is --Ed.) as follows :

"The third question is whether on the abolition of zamindaries, Income Tax will be affected or not. Because, suppose if Rs. 100/- is left in the hands of the zamindars then Income Tax which is valuable at the rate of -/4/-, -/8/-, -/2/- etc. per cent cannot be imposed after the abolition of zamindaries. What I mean to say is that after abolition of zamindaries this Rs. 100/- will come to us in toto. Therefore, the fact that after abolition of zamindaries taxation will be reduced does not arise, because that Rs. 100/- instead of being imposed on their personal income will come to our hands in toto."

In this reply while recognising that no agricultural Income Tax will be realised after the abolition of the zamindaries he consoled the members by saying that in that event the entire income of the zamindars goes to the State by virtue of the abolition of the zamindaries themselves.

94. It will be useful at this stage to examine the effect of enhanced Agricultural Income Tax and how it was actually administered in 1951 when it was in full force. The statement filed on behalf of the Government has been dealt with at length by my Lord. It will be noticed that whereas the assessment on the intermediaries rose from Rs. 3,44,783/- in 1949-50 (when the unenhanced Agricultural Income Tax was in force) to Rs. 8,86,040/- in 1951-52 (when the enhanced Agricultural Income-tax Act was in force) the assessment on the non-intermediaries fell from Rs. 2,59,234/- to Rs. 1,53,456/- in the same period. In other words the enhanced Income Tax operated only on the intermediaries during the year 1951-52. On behalf of the State however, it was stated that the assessment for the year 1951-52 for incomes below Rs. 20,000/- has not yet been made and that most of the non-intermediaries come in that group. No explanation has, however, been given as to why this group of assesseees were also not assessed along with the intermediaries. The administrative machinery for collection of agricultural Income Tax has been functioning from 1948 and the enhanced Agricultural Income Tax Act had come into force as early as September, 1950. It cannot be reasonably urged that there were insurmountable practicable difficulties in assessing those persons whose incomes were below Rs.

20,000/-. The alternative view that they were not assessed because no appreciable extra tax was likely to be realised from them seems, more probable. This itself is an important piece of evidence to show that the enhanced Agricultural Income Tax Act of 1950 was enacted to be, to all intents and purposes, a tax mainly, if not solely, on the intermediaries. In this connection I would refer to the following passage in --"Attorney General for British Columbia v. Me. Donald Murphy Lumber Co.", (1930) AC 357 at p. 563 (Z37)

"While the statute sets out to impose a tax on all timber cut within the Province it proceeds in the relative schedules to reduce the tax by rebate to an illusory amount in the case of timber used in (he Province, leaving it to operate to its full effect only on timber exported. The best evidence that the tax was intended to be to all intents and purposes an export tax is afforded by the fact that since 1914 the minute rebated tax on timber used within the Province "has not been collected"."

In this case the omission of the Government to collect any tax from the timber used in the Province, while collecting tax on the timber exported, was taken as a circumstance to indicate that it was in essence, an export tax. Notwithstanding the statement that the enhanced Agricultural Income Tax Act was necessary for financing development schemes, no attempt was made for a period of nearly two years after the passing of that Act even to assess under that enhanced Act persons whose incomes were below Rs. 20,000/-. Moreover, as pointed out by my Lord, from the statements furnished by the Government themselves it could be fairly estimated that out of the total income which the Government may derive from the enhanced tax more than five lacs of rupees and odd would be payable by intermediaries and not more than half a lac of rupees by the non-intermediaries i.e. Intermediaries would contribute about 90 per cent of the extra income to the State from the enhanced Agricultural Income Tax Act. Thus from a scrutiny of the operation and effect of the Act it seems reasonable to infer that the enhanced Agricultural Income Tax Act was meant primarily to affect the intermediaries.

95. Thus the following facts are clear. In January 1950 Sri H. K. Mahtab introduced the Orissa Estates Abolition Bill modelled on the provisions of similar Bills of other Provinces providing for payment of some compensation (though inadequate) to the intermediaries and hoping that the legality of the Bill would be unassailable in view of Article 31(4) of the Constitution. From his speech while introducing the Orissa Estates Abolition Bill on 17-1-1950, it appears that he was of the view that

"the landlords as a class rendered yeoman service from a very early period. They have always stood by Government and they have always stood by some established system; they have always stood against large-scale lawlessness."

Though due to the march of time and the necessity for land reform he sponsored the Bill for, the acquisition of zamindaries, he made it clear that most of the

recommendations in the Choudhury Committee's Report were not implemented in the Bill. When he was succeeded by Sri N. K. Choudhury the Orissa Estates Abolition Bill was referred to a Select Committee on 3-8-1950, and by that time it was clear to every one that the acquisition of zamindaries was a certainty. It is true that no material alteration was then made in the Orissa Estates Abolition Bill as originally introduced by Sri H. K. Mahtab on 17-1-1950, so far as payment of compensation to the intermediaries was concerned. The reason for this was obvious. If any material change is made in these provisions there was a danger that the President may refuse to give his assent or else the special protection conferred by Clause (4) of Article 31 of the Constitution may not apply to such alteration. Therefore, no party-in-power in August, 1950, would take the risk of making material alterations in the Orissa Estates Abolition Bill as regards the amount of compensation payable to the intermediaries. Thus, at a time when the elimination of the intermediaries had become a certainty and was a matter of few months only, Sri N. K. Choudhury piloted through the Assembly the enhanced Agricultural Income Tax Act with its steep enhancement of the rate of agricultural Income Tax which in operation and effect hits primarily, if not solely, the intermediaries. I cannot help expressing my grave doubts about the bona fide nature of the enhanced Agricultural. Income Tax Act. The professed object as given in the statement of objects and reasons, namely, to raise money for various development schemes seems a mere camouflage. If that was the real object no Legislature would select for the purpose of taxation those persons whom it had already decided to eliminate and from whom the tax can be collected hardly for a year or so.

96. The learned Advocate-General contended that the enhanced Agricultural Income Tax Act would apply with equal force to non-intermediaries such as big cultivators and that it could not be held to be a selective measure intended against the intermediaries only. I have already shown that the actual administration of the Act by the Government in 1951, reveals that the enhanced tax was levied only on the intermediaries. Moreover, when the validity of statute is under challenge one must look to its primary purpose and not to the incidental or ancillary purposes. It may be that a few big cultivators also may be liable to pay the tax and the tax collected from them may form some addition to the revenues. But the history of the legislation as mentioned above and the application and effect) of the Act as disclosed by the statements filed by the Government themselves reveal its primary purpose. In this connection I may refer to the observations of the Privy Council in "(1947) A.C. 33 (Z31)", where the question for decision was whether an Act of Quebec entitled "An Act respecting certain vacant property without an owner" was constitutional. The Privy Council held that though the statute would apply not only to banks but also in some cases to other institutions, in the vast majority of cases and primarily the legislation affected banks alone and consequently the main object and effect of the Act was to invade the field of banking which was exclusively a Dominion subject.

97. It was seriously urged that if the intention of the Government and the Legislature was to utilise the taxing power for drastically reducing the net income of the intermediaries, they could easily have done so by incorporating most of the provisions of the enhanced Agricultural Income Tax Bill, 1950 in the Orissa Estates Abolition Bill itself and thus taken advantage of Clause (4) of Article 31 of the Constitution. This argument completely overlooks the significance in the change of personnel of the Chief Minister of Orissa between January and July, 1950. It may be fairly inferred that when Sri H. K. Mahatab introduced the Orissa Estates Abolition Bill on 17-1-1950, he was not prepared to further reduce the compensation payable to the zamindars. The provisions in the Bill itself provided only for inadequate compensation and so far as agricultural Income Tax as a deduction in calculating the net income was concerned, his views were reflected in the first Orissa Agricultural Income Tax (Amendment) Bill, 1950, dated 8-1-1950. It was during the time of his successor Sri N. K. Choudhury whose pronounced views against the zamindars and their right to receive due compensation was well known, that the design of utilising the taxing power for further reducing the net income of the zamindars appears to have taken shape.

98. These are undoubtedly various suspicious features which may justify the view that the enhanced Agricultural Income Tax Act was enacted "with a fraudulent design" of defeating the provisions for payment of compensation contained in the Constitution. My Lord, however, has taken a different view on the evidence adduced before us. It seems a well settled rule that an Act of Legislature should not be declared invalid unless the invalidity is established beyond reasonable doubt (see the following passage in Willoughby's Constitutional Law of the United States, Vol. I, Edn. 2, page 43).

"The declaration that an Act of Congress is void should never be made except in a clear case. Every possible presumption is in favour of the validity of a statute and this continues until the contrary is shown beyond a reasonable doubt."

To a similar effect are the observations in Cooley's Constitutional Limitations", Edn. 8, Vol. I, p. 372.

"A reasonable doubt must be solved in favour of the Legislative action and the Act be sustained."

The question whether the enhanced Agricultural Income Tax Act was passed in furtherance of a fraudulent design is essentially a question of fact to be decided on the evidence adduced before us and certain other facts of which we could take judicial notice. The view taken by my Lord on this question would itself justify the claim made on behalf of the State of Orissa that like an accused in a criminal case the State should get the benefit of doubt. For these reasons I do not propose to dissent from his view.

99. It is perhaps academic now to discuss what the legal effect would be if this Court held that the enhanced Agricultural Income Tax Act was enacted with a fraudulent design as contended by the learned counsel for the petitioners. The

question for consideration would then be whether the Act in its entirety would be invalid or else whether it would be invalid only to the extent that it is applied for the purpose of estimating the net income of the intermediaries u/s 27(I)(b), Orissa .Estates Abolition Act. One view would be that the Act in question is a fraud on Entry 46 of List II and applying the principles of the majority of the Judges in the "Bihar case", The State of Bihar Vs. Sir Kameshwar Singh, , the entire Act is invalid. The other view is that its invalidity arises out of its infringement of the fundamental right guaranteed under Clause (2) of Art 31 of the Constitution and consequently by virtue of Clause (2) of Article 13 it would be invalid only "to the extent" of the contravention. That is to say, in calculating the compensation payable to the intermediaries under the provisions of the Orissa Estates Abolition Act it must be assumed that the enhanced Agricultural Income Tax of 1950 did not exist for the purposes of Section 27(I)(b). It is, however, unnecessary to discuss this question at length in view of my decision not to dissent from the view taken by my Lord the Chief Justice on the main question of fact,

100. For these reasons I agree with the order proposed to be passed on all the applications.