
(1963) 07 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2147 of 1961

K.N. Agarwala

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 26-07-1963

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 226, 31, 31(2)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 24, 25, 6, 6(18), 6(6)

Citation : AIR 1965 All 175

Hon'ble Judges : V.G. Oak, J;Mithan Lal, J

Bench : Division Bench

Advocate : S.C. Khare and K.N. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Oak, J.—In these two connected petitions under Article 226 of the Constitution the petitioners have raised the question of validity of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (U. P. Act No. T of 1981-- hereafter referred to as the Act).

2. On 1-3-1933 the Secretary of State for India-in-Council executed in favour of Prag Narain Agarwal a lease for land covering an area of 5,198 acres situate in 12 villages in Pargana Rudrapur, Tahsil Kichha, district Nainital. Prag Narain Agarwal died in 1938. K. N. Agarwal, who is the petitioner in Writ No. 2147 of 1961, and S. N.

Agarwal, who is petitioner No. 1 in Writ No. 2633 of 1962 are two sons of Prag Narain Agarwal. Under a family arrangement, rights under the lease now vest in K. N. Agarwal, S. N. Agarwal and other members of the family. The land covered by the lease was undeveloped. It was covered with forest. The petitioners cleared the jungle, reclaimed the land, and brought it under cultivation. A good deal of money had to be spent in developing and reclaiming the land. For the last few

years an area of about 2,900 acres has been under cultivation. Sugarcane forms the greater part of the cultivation. This is a mechanised farm. Several tractors are in use. The petitioners constructed tubewells and channels for irrigation.

3. The Act came into force in 1961. The Act imposes ceilings on holdings. Cultivators are required to submit details of cultivation for fixing a ceiling on the holding. The total area under cultivation in the petitioners' farm far exceeds the ceiling, that is likely to be fixed under the Act. The petitioners have been called upon by the authorities to file prescribed statements under the Act. The petitioners' contention is that the Act is invalid. In the alternative, no ceiling can be fixed on their farm under the Act.

4. In order to appreciate the various contentions advanced on behalf of the petitioners, it will be convenient to outline the salient features of the Act. The preamble of the Act runs thus:

"Whereas it is necessary in the interest of the community to ensure increased agricultural production and to provide land for landless agricultural labourers and for other public purposes as best to subserve the common good;

And whereas a more equitable distribution of land is essential;

And, wherefore, it is expedient to provide for the imposition of ceiling on landholdings In Uttar Pradesh for the aforementioned purposes;

5. According to Section 4 of the Act, the ceiling area of a tenure-holder shall be forty acres of Fair Quality Land. It is laid down in Section 5 that no tenure-holder shall be entitled to hold an area in excess of the ceiling area applicable to him. Sections 6 and 7 provide for exemptions. Surplus land is determined u/s 12. According to Section 14, the surplus land stands transferred to the State. Chapter III provides for determination and payment of compensation. The Schedule to the Act contains detailed instructions for calculating compensation. Chapter IV provides for disposal and settlement of surplus land.

6. The same questions of fact and law arise for consideration in these two cases. It will, therefore, be sufficient to refer to the evidence in one case. Writ No. 2147 of 1961 is being treated as the leading case, K. N. Agarwal is the petitioner in this case.

7. Vishwanath Shastri, appealing for K. N. Agarwal, did not seriously challenge the general plan of the Act. A number of public purposes have been mentioned in the preamble of the Act. It was not disputed that ceiling on holdings could be Imposed in order to carry out the public purposes mentioned in the preamble. Vishwanath Shastri however, contended that the Act contravenes Articles 14, 19 and 31 of the Constitution.

8. The learned Standing Counsel contended that Article 31A of the Constitution is a complete answer to the alleged infringement of Articles 14, 19 and 31. Article 31A of the Constitution states:

"(1) Notwithstanding anything contained in Article 13, no law providing for:

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14. Article 19 or Article 31".

9. It will be noticed that sub-clause (a) of Clause (1) of Article 31A is applicable to cases, where the State is acquiring any estate or any rights in an estate. The expression "estate" has been defined in Sub-clause (a) of Clause (2) of Article 31A:

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

We have, therefore, to consider whether in the instant case the State is acquiring any "estate".

10. Article 31A was amended by the Constitution (Fourth Amendment) Act, 1955 with retrospective effect. Before 1951 the law relating to land-tenure in Uttar Pradesh was to be found in the U. P. Land Revenue Act and the U. P. Tenancy Act. The expression "estate" was not defined in the Land Revenue Act. The term "Mahal" was defined in Clause (4) to Section 4 of the U. P. Land Revenue Act:

""Mahal" means any local area held under a separate engagement for the payment of land revenue."

In the present case the petitioners held a lease from Government. They paid rent, and not land revenue. The petitioners' farm did not constitute a Mahal as defined by the U. P Land Revenue Act. U. P. Act No. I of 1951 was in force in the year 1955. The term "estate" has been defined in Clause (8) of Section 3 of U. P. Act No. I of 1951:

""Estate" means the area included under one entry in any of the registers prepared and maintained under Clause (a), (b), (c) or (d) of Section 32 of the U. P. Land Revenue Act, 1901, or in the registers maintained under Clause (e) of the said section in so far as it relates to a permanent tenure-holder and includes share in or of an estate."

Clauses (a), (b), (c) and (d) of Section 32 of the U. P. Land Revenue Act deal with proprietary interest. The petitioners are lessees for a specific period. They are not permanent tenure-holders. Nor are they proprietors of the land. The petitioners' farm is not an "estate" under U. P. Act No. I of 1951 either. Since the petitioners' case does not relate to the acquisition of any estate, Sub-clause (a) of Clause (1) of Article 31A does not cover the "case. In Other cases relating to acquisition of estates, Article 31A can be of considerable assistance to the State

for justifying action under the Act. But Article 31A of the Constitution does not help the respondents in the present two cases.

11. The main contention of Vishwanath Shastri was that, the Act contravenes Article 31 of the Constitution. Article 31 provides for compulsory acquisition of property. Clause (2) of Article 31 states:

"No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner to which, the compensation is to be determined and given; and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate."

12. Vishwanath Shastri contended that the amounts which the petitioners are likely to receive as compensation under the Act, are far less than the value of the rights which the petitioners are going to lose. Payment of such trivial amounts does not constitute payment of compensation as required by Article 31 of the Constitution. It was urged for the petitioners that they have spent lacs of rupees in developing and reclaiming the land. It is estimated that the petitioners are likely to receive a paltry sum of Rs. 20,000 as compensation for their land. On the other hand, it was urged for the State that the land was given to Prag Narain Agarwal on special terms. For the first few years, no rent was payable. In subsequent years rent is payable on a progressive scale. The petitioners have already earned good profit from the cultivation of sugarcane and other crops during the last few years. For purposes of the present case, I shall assume that the amounts, which the petitioners are likely to receive in due course, are far less than the value of the rights which they are going to lose. The question remains whether that can be a ground for complaining that the Act does not provide for compensation. According to Vishwanath Shastri, the petitioners must get an equivalent of the property lost by them. On the other hand, it was urged for the State that under Article 31, it is not obligatory to pay the full price of the property as compensation.

13. It may be pointed out here that the present Clause (2) of Article 31 was substituted by the Constitution (Fourth Amendment) Act, 1955. The question for consideration is whether, in spite of the amendment of Clause (2) of Article 31, the State is bound to pay the full price of the property as compensation.

14. In *D. Namasivaya Mudaliar and Others Vs. The State of Madras and Others*, it was held that, the amendment did not delete the word "compensation" and substitute any other word like price or consideration or solatium in its place. The amendment did not do away with the idea of an equal return. It was only provided that it was for the legislature to determine what the exact equivalent should be. The constitution continues to retain its insistence that a citizen should be paid a just equivalent of the property which is taken away from him. In

relation to any property compensation means the exact equivalent of that property in money or other form of property.

15. In *Ramdas Nathubhai Shah v. P. Shahane*, Special Civil Appln. No. 121 of 1962 dated 11-12-1962 (Bom) the Bombay High Court had to pronounce on the validity of the Poona Mutha River Flood Limits (Prohibition of Building) and Provision for Alternative Building Sites Act, 1961 (hereafter referred to as the Poona Act), The Poona Act provides for acquisition of land and payment of compensation for land so acquired. It is laid down in Sub-section (3) of Section 7 of the Poona Act that, the Land Acquisition Act shall apply subject to certain modifications. The material modification of the Land Acquisition Act was In these terms:

"The market value of the land on the date on which the declaration.....is made, or on the first day of January 1948, whichever Is less."

It was held that 1-1-1948 had been arbitrarily selected. That Act did not provide for Compensation in the true sense. The Court, therefore, held that, Section 7 of the Poona Act offends against Article 31 of the Constitution, and is, therefore, void

16. The true scope of Article 31(2) of the Constitution came up for consideration in *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, In that case their Lordships observed on page 963:

"Mr. Das pointed out that Section 18 of the Act, though It deals with the payment of compensation, does not contain any provision for payment of compensation for mineral rights. Not only that, but the explanation to Clause (a) of Section 5 clearly lays down that in computing the compensation for the land the value of minerals will not be taken Into account. The acquisition of mineral rights would, therefore, according to him, be impermissible under Article 31(2) without payment of compensation. The learned Attorney-General quite rightly pointed out that Section 13 deals with the whole subject of payment of compensation to the owner or lessee, of the mine for his entire interest in the land including rights to minerals and even though that section specifically says that the value of the minerals cannot be taken into account in determining the amount of compensation, the concluding words of Article 31(2) precluded the petitioners from challenging the law.

17. In view of this pronouncement by the Supreme Court, the view taken by the Madras High Court and the Bombay High Court as regards the effect of amendment of Clause (2) of Article 31 cannot be accepted. It is true that before 1955 the State was under an obligation to pay money equivalent of the property as compensation. But the amendment of Clause (2) of Article 31 to 1955 has altered that situation. It is now laid down in Clause (2) that, it is sufficient for the legislature to specify the principles on which compensation is to be determined. It is no longer open to a person to complain that, compensation provided by a certain statute is not adequate. Even inadequate payment is to be deemed to be

compensation, if such compensation fulfils. either requirements of Clause (2) of Article 31. Suppose, A causes injury to B, and B claims damages. B demands a sum of Rs. 1,000 as damages. A offers to pay a sum of Rs. 100. Ultimately, the matter is settled at Rs. 500. The demand of Rs. 1,000, the offer of Rs. 100, and the ultimate payment of Rs. 500 are all by way of compensation. According to Clause (2) of Article 31, as it stands now, the term "compensation" has to be understood in the sense of solatium. U. P. Act No. 1 of 1961 lays down principles for calculating compensation. This compensation is in the nature of solatium for the loss of property rights. The Act satisfies all the requirements of Clause (2) of Article 31 of the Constitution.

18. Part IV of the Schedule to the Act provides for compensation for masonry wells, tubewells and pucca irrigational channels. Compensation payable for wells and pucca irrigational channels under the Act appears to be fair. Vishwanath Shastri points out that, there is no provision in the Act for payment of compensation for kuchha irrigational channels. The legislature might have considered that having provided for compensation for land as such and such improvements as wells and pucca irrigational channels, it was not necessary to make a separate provision for such a minor item as kuchha irrigational channels. In the case of Burrakur Coal Co. Ltd., Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, it was expressly laid down in the impugned statute that, the value of minerals will not be taken into account. Nonetheless the provision for compensation was upheld as a whole. For the same reason, omission to make a separate provision for compensation for kuchha irrigational channels cannot be said to introduce any infirmity in the general plan providing compensation.

19. About the time of commencement of the Constitution, several States in India passed statutes for acquiring land. The statutes contained certain provisions for payment of compensation. There was a good deal of litigation raising the question that compensation payable under the statutes was not adequate. In order to uphold those statutes, Parliament inserted Article 31B in the Constitution by Constitution (First Amendment) Act, 1951. According to Article 31B, none of the Acts specified in the Ninth Schedule shall be deemed to be void on the ground that the Act is inconsistent with rights conferred by Part III of the Constitution. One of the statutes specified in the Ninth Schedule of the Constitution is the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act No. 1 of 1951). It will be seen that as early as 1951, Parliament decided to uphold statutes which did not contain provisions for payment of full price as compensation. I take it that Parliament must have been aware of that situation, when the Constitution (Fourth Amendment) Act, 1955 was passed amending Clause (2) of Article 31. Compensation under Clause (2) of Article 31 no longer means money equivalent of rights taken away by the State

20 It was next urged by Vishwanath Shastri that, certain provisions of the Act infringe Article 14 of the Constitution. A number of exemptions have been enumerated in Section 6 of the Act. Clause (vi) of Section 6 is:

"Land used for tea, coffee or rubber plantations, and to the extent prescribed, land required for purposes ancillary thereto and development of such plantations"

Mr. Vishwanath Shastri pointed out that, although Clause (vi) covers tea, coffee and rubber plantations, there is no exemption for sugarcane plantation. It was urged that the considerations which weighed with the legislature in exempting tea, coffee and rubber plantations equally apply to sugarcane plantations.

21. It was stated in Para 40 of the affidavit that, an area of some two thousand acres in the petitioners' farm is under sugarcane crop. This was not disputed by the respondents. In para 8(b) of the counter-affidavit it was stated:

.....The petitioners were keen in sugar factories and not in carrying on cultivation ... The lessee had really taken the land for installing a sugar factory from the areas cultivated round about."

It is admitted that this is a mechanised farm. According to an extract from "Commonwealth Economic Committee Plantation Crops--A Review London--1960", the commodities--sugar, tea, coffee, cocoa, spices, tobacco and rubber--are linked together under the title of plantation crops. Again, on page 18 of the report, it was observed that, sugarcane can properly be termed a plantation crop. According to an article on the Agriculture of the sugarcane by A C. Barnes, sugarcane is widely grown as a plantation crop. Rationing is practised in most cane-growing countries in the world. When sugarcane is reaped, there is still a portion of the stem or stalk left underground, and it is this which gives rise to the succeeding growth of cane known as Ratoons.

22. A similar case came up for consideration in *Kunhikoman v. State of Kerala* AIR 1982 SC 723. In that case the Court had to consider the validity of Kerala Agrarian Relations Act (No. IV of 1961--hereafter referred to as the Kerala Act). The Kerala Act also provided for acquisition of land. The Act exempted tea, coffee, rubber, and cardamom plantations from certain provisions. But there was no such exemption for areca and pepper plantations. The petitioner raised the question whether it was open to the legislature to exempt tea, coffee, rubber and cardamom plantations without at the same time exempting areca and pepper plantations. The Court considered the modes of cultivation of various crops, and concluded that such discrimination was not permissible. On page 735 their Lordships observed:

"From what we have said above, it has not been shown that there is any appreciable difference between the economics of tea, coffee and rubber plantations and areca and pepper plantations. It is true that plantations in areca and pepper are not so wide-spread as tea, coffee and rubber plantations, but it is equally true that in this particular area from which these petitions come areca and pepper plantations are very common..... The result of the application of the ceiling and other provisions of the Act would mean the break-up of these plantations and may result in fall in production. It is to avoid the break-up of tea, coffee and rubber plantations and the consequent fall in production that ceiling

has not been imposed on these plantations. The same reasons, in our opinion, lead to the conclusion that pepper plantations should also be treated similarly."

It was, therefore, held that the provisions relating to plantations are violative of Article 14 of the Constitution.

23. The learned Standing Counsel contended that, sugarcane crop stands on a different footing.

It was urged that tea, coffee and rubber plants stand for several years, whereas a sugarcane plant does not stand for more than two or three years. That difference is no doubt there. But that difference would not necessarily justify a different treatment. The difference must have a bearing on the principle underlying Clause (vi) of Section 6 of the Act. The principle underlying Clause (vi) of Section 6 is that, if the Act is applied to tea, coffee and rubber plantations, such action will break-up these plantations, causing a fall in production. The same consideration applies to the petitioners' sugarcane farm, As much as an area of two thousand acres in the petitioners' farm is under sugarcane crop, the farm is mechanised. If the petitioners' sugarcane farm or plantation is split up, there will probably be a fall in the production of sugarcane.

24. Annexure "E" to the affidavit is an extract from page 196 of the Second Five-Year Plan. It is stated there:

"While determining the general ceiling on agricultural holdings in a State, it will also be necessary to consider the categories of farms to which the ceiling need not apply. Three main factors could be taken into account in deciding upon exemptions from the purview of the ceiling, namely,--

- (1) integrated nature of operations, especially where industrial and agricultural work are undertaken as a composite enterprise,
- (2) specialised character of operations, and
- (3) from the aspect of agricultural production the need to ensure that efficiently managed farms which fulfil certain conditions are not broken up.

If these considerations are kept in view, there would appear to be an advantage in exempting the following categories of farms from the operation of ceilings which may be proposed:

- (1) tea, coffee and rubber plantations;
- (2) orchards where the constitute reasonably compact areas;
- (3) specialised farms engaged in cattle breeding, dairying, wool raising etc.;
- (4) sugarcane farms operated by sugar factories; and
- (5) efficiently managed farms which consist of compact blocks, on which heavy investment or permanent structural improvements have been made and whose

break-up is likely to lead to a fall in production."

25. It appears that the exemption given by the U. P. Legislature under Clause (vi) of Section 6 of Act No. 1 of 1961 is based on the recommendation in the Second Five-Year Plan. The Planning Commission laid down three tests for deciding whether certain crops deserve exemption. The first test is integrated nature of operations, The second test is specialised character of operation. To some extent cultivation of sugarcane crop is of specialised character. It is reasonable to suppose that production from a mechanised farm is higher than production in small fields carried out with manual labour. Breaking up a large mechanised farm into small portions is liable to result in fall in production. Thus, the petitioners' mechanised farm of sugarcane satisfies all the three tests laid down in the Second Five-Year Plan. Such sugarcane plantations ought to have been exempted under Clause (vi) of Section 6 of the Act. To exempt tea, coffee and rubber plantations without granting exemption to sugarcane plantations amounts to unconstitutional discrimination. The principle of *Karimbil Kunhikoman Vs. State of Kerala*, applies to the present case also. Clause (vi) of Section 6 violates Article 14 of the Constitution. The clause is, therefore, invalid under Article 13 of the Constitution.

Clause (vii) of Section 6 is:

"land used for pharmacological and such herbal and other plantations as the State Government may by notification in the official Gazette exempt".

No serious objection can be raised against exemption granted to pharmacological plantations, According to the Concise Oxford Dictionary, "herb" means a plant of which leaves are used for food, medicine, scent, flavour etc. In the context of Clause (vii) or Section 6, the term "herbal" should be understood in a narrow sense. Here "herbal" means medicinal. The expression "other plantations" is no doubt very wide. That expression has two possible interpretations. The expression may cover every plantation that one can think of. Or the expression might have been used in the sense of *eiusdem generis*. If the expression is understood in a broad sense, Clause (vii) may be open to the charge of excessive delegation of power to the State Government. When two interpretations are reasonably possible, the Court Should adopt that interpretation which upholds a provision. So, the expression "other plantations" should be understood in the limited sense of *eiusdem generis*. If the expression is understood in that narrow sense, it appears that the entire Clause (vii) was for the protection of medicinal plants. Production of medicinal plants is a public purpose. The exemption granted under Clause (vii) of Section 6 is reasonable.

26. Clause (xviii) of Section 6 is:

"land let out after the enforcement of this Act to a Government lessee for reclamation and cultivation or for cultivation of prescribed specialised crops or for other such purposes as may be prescribed; The first object mentioned in the preamble of the Act is increased agricultural production. If uncultivated land is

brought under cultivation, there would obviously be increased agricultural production. The object of Clause (xviii) of Section 6 is to encourage people to bring uncultivated land under cultivation. The exemption under Clause (xviii) appears to be reasonable. It has been pointed out that that exemption is confined to land let out after the enforcement of the Act. If land has already been reclaimed, there is little point in granting exemption to such people for the purpose of increased agricultural production. Some date had to be fixed for differentiating land already brought under cultivation and land yet to be brought under cultivation. I see no objection in fixing the date of enforcement of the Act as the line of demarcation. The petitioners reclaimed their land many years before the Act came into force. They are not entitled to exemption under Clause (xviii) of Section 6 (26A) Section 7 of the Act states:

"Notwithstanding anything contained in this Act, the land of a tenure-holder used for cultivation of Pan, Keora, Bela, Chameli or Gulab where such person--

(a) has no land used for any other cultivation;

(b) declares all the land used for other cultivation as surplus land u/s 9 or 10; shall be exempt from the imposition of ceiling."

27. Cultivation of Part has got certain special features. One can, therefore, understand the exemption for cultivation of Pan. But cultivation of Keora, Bela, Chameli and Gulab presents no special problem. I doubt whether there are in this State many holdings of Keora, Bela, Chameli or Gulab crops exceeding 40 acres in area. There was, therefore, little point in granting exemption to these four crops. The learned Standing counsel was unable to suggest any principle justifying exemption for these four crops. Exemption for Keora, Bela, Chameli and Gulab appears to be arbitrary. To this extent, Section 7 violates Article 14 of the Constitution. So, under Article 13, that part of Section 7 is invalid.

Now we may take up a few minor points raised by Vishwanath Shastri. Section 24 of the Act deals with surplus land of mechanised farm. Section 24 states:

"(1) The State Government may, for such period as may be necessary in the public interest, instead of settling the surplus land of a mechanised farm run the same as a State farm....."

It was urged for the petitioners that, although the Act is for the purpose of providing land for landless agricultural labourers, Section 24 contemplates that the State itself should run a mechanised farm. In the first place, the provision of Section 24 is permissive. The State is not bound to take over management of every mechanised farm. It is permissible to give away a mechanised farm to landless agricultural labourers, Secondly, that is not the only object of the Act. Another object of the Act is increased agricultural production. It is a debatable point whether management of a mechanised farm by the State would lead to an increase or a fall in production. According to the school of thought, nationalisation of industry and agriculture is in public interest. According to that

view, management by the State may lead to increased agricultural production. It was open to the legislature to adopt that view, and provide for management of mechanised farms by the State. It cannot be said that Section 24 defeats the objects of the Act.

28. It was urged for the petitioners that the Act takes away the petitioners' right to acquire, hold and dispose of property guaranteed by Sub-clause (f) of Clause (1) of Article 19 of the Constitution. It may, however, be pointed out that, the right guaranteed by Article 19(1)(f) is subject to reasonable restrictions on the exercise of such rights in the interest of the general public. The statute is for certain public purposes. There is, therefore, no difficulty in holding that the restrictions under consideration are in the interest of the general public. The statute provides for compensation as required by Article 31 of the Constitution. We may, therefore, take it that the statute imposes reasonable restrictions on the petitioners' rights in the interest of the general public. The statute is saved by Clause (5) of Article 19 of the Constitution.

29. Section 25 of the Act permits use of surplus land for several public purposes. Section 25 states;

"The State Government may, instead of settling any surplus land in accordance with the provisions of this Act, use or permit the use either temporarily or permanently of the whole or any portion of such land for any purpose for which such land could have been acquired under the Land Acquisition Act, 1894",

It was contended for the petitioners that, to require the State to pay an owner of property full price of the property in proceedings under the Land Acquisition Act and to permit the State Government to acquire land under Act No. 1 of 1961 for a similar purpose without paying the full price involves discrimination. It may, however, be pointed out that, under the impugned Act, the State Government does not acquire property for purposes for which action is ordinarily taken under the Land Acquisition Act. Action is taken under the impugned Act for certain specific purposes. Such action is taken against all holdings in the State of Uttar Pradesh, unless a holding has been exempted under a specific provision of the impugned Act. It is only when land has been so acquired under the impugned Act that the question of use of surplus land arises, if land has been acquired under the impugned Act in the ordinary course, and if it is found that such land can be properly utilized for a certain purpose recognized by the Land Acquisition Act, there is no good reason why such land should not be so appropriated. The provision permitting the State Government to utilise land acquired under the impugned Act in the ordinary course for a purpose recognized under the Land Acquisition Act does not involve discrimination.

30. It was suggested that the statute is colourable legislation. Once it is conceded that the objects enumerated in the preamble are public purposes, and it is permissible to impose ceilings on holdings with that view, it is impossible to treat this statute as colourable legislation.

31. It was contended for the petitioners that, certain provisions in the Act delegate unguided legislative powers on the executive, and that such delegation of powers is not permissible. It was pointed out that, under Clause (vii) of Section 6 of the Act, the State Government may exempt "other plantations" simply by a notification. I have shown above that, the expression "other plantations" used in Clause (vii) of Section 6 has to be interpreted as ejusdem generis. Under Clause (vii) the State Government can exempt medicinal plants only. Under clause (xviii) of Section 6 of the Act, rules may prescribe the purposes which would enable a Government lessee to claim exemption. Reclamation has been mentioned as one object under Clause (xviii). It is expected that "other purposes" to be covered by rules would be purposes which would advance the objects enumerated in the preamble. It is laid down in Sub-section (2) of Section 15 of the Act that, on failure of the persons concerned to gather or remove the crop or fruits of trees on the surplus land, the Collector may remove or cause to be removed and sold by public auction any such crop or fruits or property in such manner as may be prescribed. If the owner of property fails to gather his crop, he is hardly interested in the manner in which the Collector arranges to remove the crop and sell it by public auction. Section 33 of the Act enables the Prescribed Authority to fix hereditary rates on such principles as may be prescribed. The principles on which hereditary rates are fixed during settlement operations are well settled. There is little possibility of arbitrary rules on this point being Issued. I do not think that any provision in the Act delegates unguided legislative power on the executive.

32. The petitioners have succeeded in establishing that Clause (vi) of Section 6 and a part of Section 7 of the Act are invalid. The question, therefore, arises whether these provisions are severable from other provisions in the Act, or the entire Act is invalid.

33. This question came up for consideration before the Supreme Court in Karimbil Kunhikoman Vs. State of Kerala, The majority of the Court held that, the whole Act must be struck down as violative of Article 14 of the Constitution, so far as the Kerala Act applied to ryotwari lands in those areas of the State which were transferred to the State of Kerala from the State of Madras. Speaking for the majority, Wanchoo, J. observed on page 787:

"The next question is whether these provisions are severable, that is to say, whether the Kerala legislature would have passed the Act without these provisions. That depends upon the intention of the legislature and as far as we can judge that intention from the provisions of the Act, it seems clear to us that the legislature did not intend that the provisions relating to acquisition by tenants and ceilings should apply to plantations as defined in the Act so that they may have to be broken-up with consequent loss of production and detriment to national economy. It seems that the legislature could not have intended in order to come out the purpose of the legislation to do so even after breaking up all the plantations which existed in the State. It follows therefore that legislature would

not have passed the test of the Act without the provisions relating to plantations. As these provisions affect the entire working out of Chapters II and III of the Act which are the main provisions thereof, it follows that these provisions relating to plantations cannot be severed from the Act and struck down only by themselves. Therefore, the whole Act must be struck down as violative of Article 14 of the Constitution"

A different view was, however, taken by Sarkar, J. He observed on page 741;

"I think however that these provisions are severable from other parts of the Act. I think it cannot be reasonably said that the legislature would not put the Act into operation if these provisions are" taken out of it. The deletion of the provisions does not further make it impossible for the rest of the Act to operate. I am, therefore, unable, to hold that, because the sections mentioned above are bad, the whole Act should be declared to be bad."

34. I now proceed to consider whether Clause (vi) of Section 6 and Section 7 of the Act are severable from the rest of the Act, Clause (vi) of Section 6 grants exemption to tea, coffee and rubber plantations. I understand that there are no extensive tea, coffee and rubber plantations in Uttar Pradesh. So, whether tea, coffee and rubber plantations are brought within the scheme of the Act or are exempted, should make little difference to the general scheme of fixing ceilings on holdings in Uttar Pradesh, In the case from Kerala, it was found that there were extensive tea, coffee and rubber plantations in the State of Kerala. It is not so in Uttar Pradesh. The circumstances, which induced the Supreme Court to strike down the Kerala Agrarian Relations Act, do not apply to U. P. Act No. 1 of 1991. u/s 7 of the Act, Keora, Bela, Chameli and Gulab have been exempted. These are very minor crops. Whether one formally imposes ceilings on holdings of Keora, Bela, Chameli and Gulab or exempts them is a matter of little importance. Even if the legislature were aware that Clause (vi) of Section 6 and a part of Section 7 of the Act are invalid, that circumstance would not have influenced the legislature in passing the Act. These invalid provisions can be easily separated from the rest of the Act It is not, therefore, necessary to strike down the whole of U. P. Act No. 1 of 1961.

35. S. C. Khare, appearing for K. N. Agarwal, suggested three alternatives: (i) the whole Act may be declared invalid; or (ii) the petitioners' sugarcane plantation may be deemed to be included in Clause (vi) of Section 6 of the Act; or (iii) this Court may direct the State Government to issue a notification under Clause (vii) of Section 6 of the Act exempting sugarcane plantations. I have already held that, although Clause (vi) of Section 6 and a portion of Section 7 are invalid, the remaining provisions in the Act are valid. There is, therefore, no question of striking down the entire Act. The effect of holding Clause (vi) of Section 6 of the Act invalid is that Clause (vi) of Section 6 becomes inoperative. In terms, Clause (vi) of Section 6 does not exempt sugarcane plantations. To exempt sugarcane plantation under this provision would amount to amendment of the provision. The Court has no power to amend a statutory provision. That is

the function of the legislature. Nor can we compel the State Government to issue a notification under Clause (vii) of Section 6 exempting sugarcane plantations. We can Issue a writ of mandamus, only if the petitioners are able to establish any such duty on the part of the State Government. The State Government has discretionary power in exempting certain plantations under Clause (vii) of Section 6. In the first place, it is doubtful whether sugarcane plantation is at all covered by Clause (vii) of Section 6. Secondly, whether sugarcane plantation should be exempted under Clause (vii) or not has to be left to the discretion of the State Government. The State Government is under no obligation to exempt sugarcane plantation under Clause (vii), It is not, therefore, possible for this Court to issue a writ of mandamus to the State Government to issue a notification exempting sugarcane plantation under Clause (vii) of Section 6 of the Act.

36. At the same time I cannot help remarking that, the petitioners have made out a fair case for exemption for their mechanised farm (sugar-cane plantation). The land was let out to Prag Narain Agrawal in the year 1933 for reclamation. The petitioners have spent a good deal of money in reclaiming and developing the land. The petitioners must have spent a lot of money in purchasing tractors and other agricultural machinery and in making various constructions on this farm. If this large farm to split up into small fragments, considerable fall in agricultural production is likely. I can suggest two ways to meet the situation. Either Clause (vi) of Section 6 of the Act may be suitably amended in order to bring sugarcane plantations within the exemption. On the State Government may consider whether it is possible to issue a notification under some provision of the Act exempting sugarcane plantations.

37. On the one hand, the petitioners have succeeded in showing that certain provisions in the Act are invalid. On the other hand, the Court is unable to grant the petitioners any relief. Under the circumstances, parties may be left to bear their own costs. In my opinion, the two writ petitions should be dismissed; and parties may bear their own costs.

Mithan Lal, J.

38. Both these writ petitions under Article 226 of the Constitution of India (hereinafter called the Constitution) have been Filed on identical grounds. Respondent No. 1 is the State of Uttar Pradesh while respondent No. 2 is the prescribed authority under the provisions of U. P. Imposition of Ceiling on Holdings Act 1960 U. P. Act 1 of 1961 (hereinafter referred to as the Act). In each petition it has been prayed to issue a writ of mandamus, order or direction in the nature of mandamus directing the two respondents not to interfere in petitioners' possession of their mechanised farm and respondent No. 2 be further directed not to take any proceedings for declaration of surplus land. It has also been prayed that a writ in the nature of prohibition be issued against respondent No. 2 prohibiting him from taking any proceeding against the petitioners under the Act.

39. Each petition contains as many as 28 grounds for attacking the constitutionality of the Act but the attack has been confined to the following grounds only.

1. The Act is a colourable legislation which violates the provisions of Article 31 of the Constitution because:

(a) the object of the preamble of the Act en-luring increased agricultural production and providing land for landless agricultural labourers is not achieved and does not appear to be connected in any way with the operative provisions of the Act to that the very purpose of the Act remains unachieved.

(b) the compensation payable under the Act is no compensation adequacy of compensation apart,

(c) the law is not a valid law being violative of Article 19(1)(f) and Article 14 of the Constitution.

2. The Act exempts certain plantations under Clauses (vi), (vii), (viii) and (xviii) of Section 6 and Section 7 has no exemption has been given to sugarcane which is also a plantation. These provisions and certain other provisions of the Act are discriminatory as there is no rational basis for classification and so they are violative of Article 14 of the Constitution. There is also excessive delegation of power to the executive.

3. The amount of compensation payable for acquisition is illusory for certain properties. There is no provision for compensation for roads, kachha channels and for machinery and as the petitioners' farm is an integrated unit the restrictions imposed are unreasonable and should be struck down under Article 19(1)(f) of the Constitution.

40. I entirely agree with the views expressed by my brother that the Act is not violative of the provisions of Article 31 or Article 19(1)(f) of the Constitution. The petitioners stand on a different footing than the ordinary tenure-holders in the State inasmuch as they are lessees of Government estates to which the provisions of the U. P. Abolition of Zamindari Act did not apply. The land occupied by them is not covered by the definition of the word "estate" given in that Act, The rights conferred upon the petitioners are also not "rights in relation to such estate" as defined in Clause (2) of Article 31A. The State Government may be able to successfully contest the claim of any tenure-holder in the estate, other than a lessee of a Government estate, who questions the validity of the Act, under the provisions of Article 31A which saves the laws providing for the acquisition of estates and which also validates certain Acts and Regulations. These articles cannot be taken advantage of by the State Government in the ease of these petitioners. The learned Standing Counsel did not seriously claim protection of these two articles as against the petitioners.

41. V.N. Shastri, learned counsel for the petitioners challenged certain provisions of the Act on the basis of three arguments as put down in (a), (b) and (c) of

point No. 1 but we do not agree with him that the Act is a colourable legislation which in any way violates the provisions of Article 31. The preamble of the Act lays down three objects:

1. Ensuring increased agricultural production.
2. To provide land for landless agricultural labourers, and
3. For other public purposes to subserve the common good.

It is not quite correct to say that there is no reasonable nexus between the object of the preamble and the operative provisions of the Act. All the three objects have been kept in view while drafting the operative provisions of the Act contained in Ch. IV relating to disposal and settlement of surplus land. This chapter contains Sections 24 to 31. Section 24 relating to mechanized farm is an enabling section giving the State Government the power either to settle the land to landless labourers or to run the farm as a State farm and for that purpose appoint a suitable person as Manager. It has also been provided that the former owner of the farm may be appointed Managers if they fulfil certain qualifications. Obviously these powers taken by the State Government are to ensure increased agricultural production. It cannot be accepted that merely because the land is to be settled to landless labourers or is to be managed by the State Government through a Manager the production is likely to fall. Section 25 deals with the utilization of surplus land for other public purposes which is the third object of the preamble.

Section 27 deals with the settlement of the surplus land and under the provisions of that section the settlement of the land in a particular village will depend upon the surplus area. Up to a limit of 15 acres, the land is to be allotted to Gaon Samaj for community purposes. If Gaon Samaj does not hold such land or holds a lesser area of land than 15 acres surplus land up to 15 acres, including the land in possession of the Gaon Samaj, is allotted to Gaon Samaj. Thereafter the land is to be distributed to Co-operative Societies or to the landless or other members thereof and the provisions of Sub-sections (2), (3) and (4) of Section 27 of the Act lay down the manner of this distribution. Section 28 deals with the terms and condition of the settlement while other sections in this chapter relate to future acquisition of land or to the land gained by the recess of a river. The operative provisions of the Act in no way go against the object of the preamble, nor can the Act be said to be a colourable legislation on that account.

42. The question relating to compensation payable under the Act has been fully dealt with by my brother. Compensation is to be calculated according to schedule. That schedule lays down different categories of tenure-holders and the manner of calculating the compensation. The case of the petitioners will be covered by Part II, Clause (a) or (b) whichever be applicable to their case. There is also a provision in Section 33 of the Act for the revision or modification of the applicable hereditary rates. In cases the tenure-holders think that the hereditary rate is low they may get the hereditary rates modified before compensation is

determined. The multiple value which has been kept in view for payment of compensation to the various categories of tenure-holders, appears to have been done on the basis of their interest in land. Part IV of that schedule provides for compensation for buildings, wells, irrigation channels, trees etc. It is true that there is no mention in Part IV of kachha irrigation channels or the roads but that alone cannot lead to the conclusion that no compensation has been fixed for acquisition. Sri Shastri had to concede that adequacy of compensation cannot be questioned and his argument was that compensation should be such as represents the money value of the property on the date of the acquisition.

This argument is nothing more than arguing about the adequacy of compensation. The Parliament while making amendment in Article 31 certainly retained the expression "compensation for property" but the meaning of the expression was obviously restricted when it was left to the legislature either to fix the amount of compensation or to specify the principles on which and the manner in which the compensation was to be determined. It has further been provided as pointed out by my brother that no such law relating to compensation can be questioned in a court of law on the ground of adequacy. His claim for money equivalent to the property is in other words a claim for adequate or market price of the property. When the Act prescribes the principles on which and the manner in which the compensation is to be determined for various categories of tenure-holders, or for buildings, wells, trees etc., the validity of the Act cannot be questioned on that ground. I agree with my brother that the views taken by Madras and the Bombay High Courts referred to by Sri Shastri do not find support from the view expressed by the Supreme Court in the case of *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, .

43. The last argument of Sri Shastri under Article 31 was that the law is not a valid law being violative of Article 19(1)(f) and Article 14 of the Constitution. My brother has overruled this argument and I agree with him that the law is not hit by Article 19(1)(f) nor Article 14 affects the whole law.

44. So far as point No. 2 goes it does appear as shown by my brother that Clause (vi) of Section 6 and Section 7 so far as it relates to Keora, Bela, Chameli and Gulab (except Pan) appear to be discriminatory. There is no rational basis for classification of tea, coffee and rubber in one category of exemption without giving a similar exemption to sugarcane plantation in mechanized farms though recommended by the Planning Commission. Sugarcane plantation also requires special agricultural operations. For want of data it has not been possible to work out the economics of these plantations as compared to sugarcane plantation but having regard to special nature of agricultural operations required for mechanised sugarcane production, the cost incurred, as well as the continuity of crop for three years or so, we find hostile discrimination which is not justified.

In the case of the petitioners it further appears that they have some sort of Integrated operations with industry inasmuch as they have their own open Pan sugar factory and also a good quantity of sugarcane is supplied to the sugar mill

in that zone. Such sugarcane plantations of mechanized farms should also have been exempted and there appears to be obvious discrimination between tea, coffee, rubber on one hand and the sugarcane on the other. Keora, Bela, Chameli and Gulab cultivations have also been exempted u/s 7 and we find no reasonableness in this classification as well. Except for Clause (vi) of Section 6 no other clause of that section appears to be discriminatory and we do not agree with the learned counsel for the petitioners that there is either any discrimination in Clause (vii) or there is any excessive delegation of power to the executive in that clause or Clause (xviii). I further agree with my learned brother that Clause (vi) of Section 6 and Section 7 are severable and the whole Act cannot be struck down on that account. Point No. 3.

45. I again agree with my brother that the law is not bad under Article 19(1)(f).

46. In spite of the fact that Clause (vi) of Section 6 and major portion of Section 7 are violative of constitutional provisions yet we are unable to award any relief to the petitioners. None of the alternatives suggested by the petitioners' learned counsel can form the subject matter of any writ, direction or order. The remedy of the petitioners only lies in approaching the State Government for making amends and giving them a suitable redress,

47. Both the writ petitions must fail. No order as to costs can be made.

48. BY THE COURT: The two connected writ petitions are dismissed. Parties shall bear their own costs in each case