
(2002) 07 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 32560 of 1996

K.T. Plantation Pvt. Ltd. and Another	APPELLANT
Vs	
The State of Karnataka	RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Constitution of India, 1950 — Article 254 (2), 300A
Karnataka Land Reforms Act, 1961 — Section 107, 110, 72

Citation : AIR 2002 Kar 365

Hon'ble Judges : G.C. Bharuka, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : K.G. Nayak, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The dispute and related constitutional issues raised by the petitioners in the present writ petition concern the lands and properties held by late Dr. Svetoslav Roerlch Mrs. Devika Rani Roerich. These two legendary figures, being husband and wife, had died respectively on 30-1-1993 and 9-3-1994 leaving behind them invaluable assets in various forms including immovable properties which was commonly known as "Tataguni Estate".

2. The prayer in the present writ petition is to declare Section 110 of the Karnataka Land Reforms Act, 1961 (in short "Land Reforms Act") and the Roerich & Devlkarani Roerich Estate (Acquisition and Transfer) Act, 1996 (in short the "Acquisition Act") as unconstitutional and also to quash the Gazette Notification dt. 18-3-1994 issued by the State Government u/s 110 of the Land Reforms Act, by which exemption granted to the lands used for cultivation of Linaloe trees from operation of the Land Reforms Act has been withdrawn.

3. The 1st petitioner is a private limited company registered under the provisions of the Companies Act, 1956. The 2nd petitioner is its Managing Director. According to the petitioners, the company is involved in the plantation business.

It had acquired part of the lands owned by Roerich couple under registered sale deed dt. 27-3-1991.

4. According to the petitioners, Mrs. Devika Rani Roerich had also executed sale deed on 16-2-1992 in favour of the company to an extent of 223 acres 22 guntas of land and had put the petitioner company in actual possession thereof on that very day. According to the petitioners, because of restraint order passed by the State Government this sale deed could not be registered so far. The official memorandum dt. 5-3-1992 issued by the State Government in this regard has been placed at Annexure "C". The dispute regarding acquisition of title over the lands sold by Mrs. Devika Rani Roerich to the petitioner company is subject-matter of civil dispute in O.S. No. 122/1992 pending on the file of the 2nd Addl. Civil Judge, Bangalore. (See Mary Joyce Poonacha (Mrs) Vs. K.T. Plantations Pvt. Ltd. and Others, .

5. Further claim of the petitioners is that the lands purchased by the petitioner company being Linaloe plantation are exempt from the provisions of the Land Reforms Act and therefore it was well within their rights to purchase these lands. Subsequently, the State Government issued notification u/s 110 of the Land Reforms Act which has been published in the Official Gazette dt. 18-3-1994 directing that the lands used for cultivation of Linaloe trees referred in Clause (vi) of Sub-section (1) of Section 107 of the Land Reforms Act, which had been exempted from the provisions of the Act except Section 8, shall not be exempted from any provisions of the Act.

6. Consequent upon issuance of the above notification, the Assistant Commissioner, Bangalore Division, Bangalore, issued show cause notice dt. 28-3-1994 (Annexure "E") to the petitioner company requiring it to explain as to why the lands measuring 137 acres 33 guntas which had been purchased from Roerich couple should not be forfeited to the Government under the provisions of the Land Reforms Act.

7. According to the petitioner, instead of filing reply to the said notice, they questioned validity thereof before this Court in W.P. No. 12806/1994, wherein this Court by its order dt. 22-4-1994 stayed all the proceedings before the Assistant Commissioner. Subsequently, the State Legislature passed the Acquisition Act wherein all the lands purchased by the petitioner along with the other lands and movable assets owned by the Roerich couple are sought to be acquired. It is because of these reasons, that the petitioners have questioned the validity of Section 110 of the Land Reforms Act and the notification issued thereunder as well as the provisions of the Acquisition Act.

Re : The Estate

8. The Estate of the deceased couple inter alia comprised of buildings, jewellery, agricultural lands, plantings, and art of work etc. So far as immovable properties are concerned, details thereof are as under :--

Details of lands held by Mrs. Devika Rani Roerich and Dr. S. Roerich in Bangalore South Taluk known as Tataguni Estate

Name of Village

Name of Hobli

Sy. No.

Extent in Acres

Extent in Hectares

Gross

Kharab

Net

Gross

Kharab

Net

"I. Land held by Smt. Devika Rani

(1) Uttarahalli

Mahavarthe

Kaval

Uttarahalli

15/1

11.05

11.00

0.05

4.50

4.45

0.05

15/3C

39.09

0.37

38.12

15.87

0.37
15.50
15/4
9.20
0.20
9.00
3.84
0.20
3.64
16/2
13.30
0.39
2.31
2.31
5.56
0.30
(2) B. M. Kaval
Kengeri
127
0.25
—
0.25
0.25
—
0.25
128
59.15
0.25
58.30
24.02

0.25

23.77

130

91.32

0.16

91.16

37.15

0.16

36.30

225.16

14.17

210.39

91.19

5.82

85.37

II. Land held by Sri S. Roerich

(1) Uttarahalli

Mahavarthe

Kaval

Uttarahalli

38

100.00

—

100.00

40.46

—

40.46

14

18.17

—

18.17

7.46

—

7.46

15/2

21.25

0.25

21.00

8.75

0.25

8.50

15/3B

37.08

10.22

26.26

15.05

4.27

10.78

15/3D

0.25

0.21

10.01

4.30

0.21

4.09

16/1

3.12

0.20

12.32

5.38

0.20

5.18

(2) B. M. Kaval

Kengeri

121

4.05

2.33

11.12

5.72

1.14

4.58

126

23.28

0.10

23.18

9.59

0.10

9.49

(3) Agara

Kengeri

57

0.17

—

0.17

0.17

—

0.17

61 (part)

4.00

—

4.00

1.62

—

1.62

243.17

15.11

228.06

98.50

6.17

92.33

9. The executive officer of the Estate through her affidavit dt. 17-7-2001 has stated that the Roerich Estate consists of total extent of 468.33 acres of land in Sy. Nos. 38, 14, 15/1, 15/2, 124, 126, 128, 130, 57, 61 (Part), 127, 15/4, 15/3B, 15/ 3C, 15/3D, 16/1 and 16/2 all coming under the limits of Uttarahalli Manavarthe Kaval, B. M. Kaval and Agara Villages. According to her, there are in total 12,273 trees consisting of 9,892 Burser a Trees (Linoloe Trees), 283 Silver Oak Trees and 2,098 other miscellaneous varieties. She has also filed sketch map of the entire property which gives description of the user of various extent of lands in the Estate. According to this deponent, Linoloe Trees are located only in Sy. Nos. 38, 14, 15/2, 124, 126, 128, 130, 57, 61 (Part), 127 and 15/4.

10. It appears that Dr. S. Roerich had sold the following extent of land to the petitioners company under a registered sale deed-

Name of Village

Name of Hobli

Sy. No.

Extent in Acres

Extent in Hectares

Gross

Kharab

Net

Gross

Kharab

Net

(1) B. M. Kaval

Kengeri

124

14.05

2.33

11.12

5.72

1.14

4.58

126

23.28

0.10

23.18

9.59

0.10

9.48

(2) Agara

Kengeri

57

0.17

—

0.17

0.17

—

0.17

61 (part)

3.15

—

3.15

1.37

1.37

(3) Uttarahalli

Mahavarthe

Kaval

Uttarahalli

(12)38

100.00

100.00

40.46

141.25

3.03

138.22

57.31

1.24

56.0

Reg: Constitutional Validity of Section 110 of the Land Reforms Act:

11. The Land Reforms Act was brought into force w.e.f. 13-9-1965 after receiving the assent of the President of India. This Act has been specified in the Ninth Schedule to the Constitution of India and finds place at entry 51 of the said schedule. This entry was added by the Constitution of India (Seventeenth Amendment) Act, 1964.

12. Article 31B of the Constitution provides protection to the Acts specified in the Ninth Schedule from being assailed on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any provisions of Part-III of the Constitution. It is well settled that validity of the Act made by Legislature in India can be questioned only on the grounds of (i) legislative incompetence (ii) violation of any of fundamental rights enshrined in Part-III of the Constitution.

13. In the present case, the Land Reforms Act does not suffer from the vice of the legislative incompetence nor it has been so complained of. So far as the

second ground based on violation of fundamental rights as guaranteed in Part III of the Constitution is concerned. In view of placing of the Land Reforms Act in the Ninth Schedule of the Constitution, neither taking of such a ground is permissible nor any complaint on this score can judicially be examined. In the above view of the matter, we find absolutely no ground or reason to declare Section 110 of the Land Reforms Act, which was there right from the inception, to be constitutionally invalid.

14. The learned counsel for the appellant has raised the contention that impugned Land Reforms Act has been added to the Ninth Schedule by the Constitution (Amendment) Act, 1974 and therefore in view of the law declared by the Supreme Court in the case *H. S. Srinivasa Raghavachar v. State of Karnataka*, AIR 1987 SC 1518, it is very much open to the petitioners to challenge the validity of the Act or any provision thereof on the ground of damage to the basic structure of the Constitution.

15. In the case of *Waman Rao and Others Vs. Union of India (UOI) and Others*, it was *Inter alia* held that (Para 64) :

"In *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, decided on April 24, 1973 it was held by the majority that Parliament has no power to amend the Constitution so as to damage or destroy its basic or essential features or its basic structure. We hold that all amendments to the Constitution which were made before April 24, 1973 and by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are valid and constitutional. Amendments to the Constitution made on or after April 24, 1973 by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are open to challenge on the ground that they, or anyone or more of them, are beyond constituent power of the Parliament since they damage the basic or essential feature of the Constitution or its basic structure."

16. In the present case, admittedly, the Karnataka Land Reforms Act was placed in the Ninth Schedule to the Constitution in 1964 and therefore, the law laid down by the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, has no application to the provisions contained therein including impugned Section 110 of the Land Reforms Act which was there right from the inception.

17. We may notice here that the constitutional validity of the amendment made to the Land Reforms Act in 1974 by the Karnataka Land Reforms (Amendment) Act, 1973 (Karnataka Act No. 1/1974) has been upheld by the Supreme Court in its entirety in the case of *H.S. Srinivasa Raghavachar Vs. State of Karnataka and Others*, . Therefore, challenge made to Section 110 of the Land Reforms Act and the impugned notification at Annexure "D" has to fail.

Re : Validity of Notification dt. 18-3-1994 withdrawing exemption (Annexure "D")

18. As noticed above, the impugned notification at Annexure "D" has been issued u/s 110 of the Land Reforms Act, 1961 which reads as under :--

110. Certain lands to be not exempt from certain provisions.-- The State Government may, by notification, direct that any land referred to in Sections 107 and 108 shall not be exempt from such of the provisions of this Act from which they have been exempted under the said sections.

18A. The impugned notification at Annexure "D" reads as under :--

"Notification No. RD 217 LRA 93 Bangalore, dated 8th March, 1994

In exercise of the powers conferred by Section 110 of the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962), the Government of Karnataka hereby directs that the land used for cultivation of lineally referred to in Clause (vi) of the Sub-section (1) of Section 107 of the said Act, which has been exempted from all the provisions of the Act except Section 8, shall not be exempted from any of the provisions of the said Act."

19. In the case of I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) it has been held that (Para 73) :

"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other Statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

20. Withdrawing of grant of exemption from the provisions of an Act is essentially a matter of policy and the same cannot be interfered with by this Court unless it is shown to be manifestly arbitrary. We may usefully refer to the binding authorities laid down by the Supreme Court in the case of The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, and Premium Granites and Another Vs. State of Tamil Nadu and Others, wherein the law on the subject has been succinctly analysed and declared.

21. The impugned notification has been issued in furtherance of the object of the Act which relates to agrarian reforms, conferment of ownership on tenants, ceiling on land holdings and for certain other matters appearing in the Act. The relevant legislative policy devised under the Act is to be found at Section 79-B of the Act which provides for prohibition of holding agricultural land by certain persons. This provision declares that it shall not be lawful for a company to hold any agricultural land.

22. No doubt u/s 107 exemption was given for lands used for cultivation of

linaloe, but this was only an exception to the general underlying legislative policy which was coupled with a right conferred on the State Government to withdraw such exemption as and when though proper. The State Government keeping in view the changed facts and circumstances has issued the impugned notification withdrawing exemption in respect of the lands used for cultivation of linaloe. Nothing has been placed on record to show that such an act on the part of Government was manifestly arbitrary or was preceded by any personal vendetta or mala fide.

22A. Apart from the above reasonings, what is finally determinative of the issue regarding challenge to the impugned notification is the law declared by 7-Judges Bench of the Supreme Court in the case of Latafat Ali Khan and Others Vs. The State of U.P., wherein it has been held that (Para 2) :

"It seems to us that if a statutory rule is within the powers conferred by a section of a statute protected by Article 31-B, it is difficult to say that the rule must further be scrutinised under Articles 14, 19, etc. Rule 4(4) seems to us to be a rule which does not go beyond the powers conferred u/s 6(xvii), read with Section 44 of the Act. At any rate. Section 6(xvii) and Rule 4(4) are part of a scheme of land reform in U.P. and would be protected from attack under Article 31A of the Act."

22B. Following the law declared by the Supreme Court in Latafat's case (supra), the issue regarding validity of the impugned notification at Annexure D cannot be said to be bad or unenforceable. We accordingly uphold the validity of the notification under challenge.

Re : Right of the petitioner company to hold-lands after withdrawal of exemption u/s 107 of the Land Reforms Act:

23. Section 107 of the Land Reforms Act to the extent it is relevant for the present purpose reads as under :--

Section 107. Act not to apply to certain lands.-- (1) Subject to the provisions of Section 110, nothing in this Act, except Section 8, shall apply to lands,--

(i) *** ***(vi) used for the cultivation of linaloe :

(vii) *** ***(2) Notwithstanding anything in Sub-section (1), no person shall, after the date of commencement of the Amendment Act acquire in any manner for the cultivation of linaloe, land of an extent which together with the land cultivated by linaloe, if any, already held by him exceeds ten units.

(3) In respect of every acquisition contrary to Sub-section (2), the provisions of Sections 66 to 76 shall mutatis mutandis apply.

24. Section 79-B of the Land Reforms Act provides for prohibition on holding agricultural land by certain persons which includes companies. It reads as under :--

Sec. 79-B. Prohibition of holding agricultural land by certain persons.-

(1) With effect on and from the date of commencement of the Amendment Act, except as otherwise provided in this Act.-

(a) no person other than a person cultivating land personally shall be entitled to hold land; and

(b) it shall not be lawful for,

(i) *** ***(ii) a company

(iii) *** ***(

to hold any land.

(2) *** ***(3) The Tahsildar shall, on receipt of the declaration under Sub-section (2) and after such enquiry as may be prescribed, send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner who shall, by notification, declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner.

25. In view of the provisions contained in the Land Reforms Act, it will be for the statutory authorities to ascertain as to whether the lands purchased by the petitioner-company from late RoeRichs was in violation of the provisions of the said Act or was in excess of the limits prescribed u/s 107(2) of the said Act and take suitable action as provided in law.

25A. Further looking at the scheme of the Land Reforms-Act, it seems to us that after withdrawal of the exemption by notification at Annexure "D", Section 79-B of the Act becomes operative in respect of the lands purchased by the petitioner-company and therefore it has to be declared as vested in the State Government in terms of Sub-section (3) of Section 79-B of the Land Reforms Act by issuing appropriate notification and the company will be entitled to compensation as provided u/s 72 of the Land Reforms Act, which reads as under :--

Section 72, Amount payable for lands surrendered to and vesting in the State Government.-- (1) Save as otherwise provided in this Act, the amount payable in respect of land to be taken over by the State Government under Sections 68, 70, 71, 79-A and 79-B shall be determined with reference to the net annual income derivable from the land in accordance with the following scale, namely :--

(i) for the first sum of rupees five thousand or any portion thereof of the net annual income from the land, fifteen times such sum or portion;

(ii) for the next sum of rupees five thousand or any portion thereof of the net annual income from the land, twelve times such sum or portion;

(iii) for the balance of the net annual income from the land, ten times such balance:

Provided that where the land taken over by the State Government is D Class land referred to in Part-A of Schedule I, an amount equal to twenty times the net annual income thereof shall be payable.

(2) For the purpose of Sub-section (1), the net annual income from the land shall be deemed to be the amount payable as annual rent in respect of the land as specified in Section 8. But where in a land assessed as wet land or dry land, the owner has raised fruit bearing trees, the net annual income of such land for purposes of Sub-section (1) shall be determined on the basis of assessment for garden land which could have been levied having regard to the nature of the fruit bearing trees.

(3) The amount under Sub-section (1) shall be payable as follows :--

(a) to the tenant, if any, in possession of the land, an amount equal to one year's net annual income,

(b) to the owner, the balance.

(4) Where there are wells or other structures of a permanent nature on the land, constructed by the owner then, the value thereof calculated in the prescribed manner shall be payable.

(5) Notwithstanding anything in Sub-sections (1) and (4), the aggregate amount payable according to the said sub-sections shall not exceed rupees two lakhs.

26. From a reading of Sub-section (5) of Section 72 of the Land Reforms Act as reproduced above, it is clear that the petitioner-company may be entitled to compensation of Rs. 2 lakhs only for the lands which stands vested in the Government in terms of Section 79-B(3) of the said Act. In any view of the matter, one aspect is more than clear that for the lands lost by the company pursuant to said vesting, the company will be entitled to compensation only under the provisions of the Land Reforms Act and not under the provisions of the Acquisition Act.

Re : The Roerich & Devikarani Roerich Estate (Acquisition & Transfer) Act, 1996

27. As already noticed above, Dr. S. Roerich had pre-deceased Smt. Devika Rani Roerich. After the death of Smt. Devika Rani Roerich, the State Legislature felt it essential to acquire the Estate by bringing appropriate legislations in order to safeguard the same from being wasted because of negligence or misappropriation by land grabbers through unscrupulous means and manipulations. Since the State Legislature felt that the Roerich Estate has acquired the status of national heritage and it is essential to preserve the same in public and national interest, accordingly, after obtaining the assent of the President on 15-11-1996, the Roerich and Devikarani Roerich Estate (Acquisition and Transfer) Act, 1996 (Karnataka Act 19 of 1996) (in short the "Act") as enacted by the State Legislature was brought into force with effect from 21-11-1996. The following Statement of Objects and Reasons were placed before

the Legislature along with the Bill proposing the enactment.

Statement of Objects and Reasons "Ever since Dr. Svetoslav Roerich and Smt. Devikarani Roerich fell ill and were confined to private living in a city hotel, vested interests started damaging the identity of the property comprised in their estate, popularly known as Tataguni Estate and tried to usurp possession of the said property. The artifacts and art objects, carving and important paintings are deteriorating due to lack of attention. The rich forestry on the land is getting depleted on account of the impracticability of taking preventive measures in the absence of clear title in respect of the property. The valuable jewellery and artifacts are being sold underground and appropriated by persons who by virtue of their employment association were close to the Roe Richs.

It is therefore considered necessary that the Roerich and Devikarani Roerich estate be acquired in public interest and transferred to a Trust to be established under the Act in order to secure proper management of the said estate, so as to preserve the valuable tree growth, paintings, art objects and carvings and to establish an Art Gallery-cum-Museum.

Accordingly, a draft of the Roerich and Devikarani Roerich Estate (Acquisition and Transfer) Ordinance, 1992 was sent to the Government of India for obtaining the previous instructions of the President to the ordinance. The Government of India had now informed that they have no objection to the proposed legislation and has advised to introduce it as a Bill. The Bill among other things provides for the following :--

- (i) Acquisition of the Roerich and Devikarani Roerich Estate
- (ii) Payment of a sum of Rs. 5 crores for the vesting of the estate in the Government
- (iii) Appointment of Commissioner of payment for the purpose of disbursing the amount
- (iv) Transfer of the estate to a Board of Trustees established for the purpose of administration and management of the estate.

28. Chapter-II of the Acquisition Act makes elaborative provisions for transfer and vesting of the Estate. Sections 3 and 4 of the Acquisition Act are material in this regard. These Sections reads as under:-

3. Transfer and vesting of the Estate in the State Government.-- On the appointed day, the Roerich and Devikarani Roerich Estate (hereinafter referred to as the "Estate") and the rights, title and interest of the owners and transferees in relation to the Estate shall, by virtue of this Act stand transferred to and shall vest absolutely in the State Government.

4. General effect of vesting.-- (1) The Estate shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including buildings, jewellery, painting, art works and

all other rights and interests in or arising out of such property, as were immediately before the appointed day in the ownership, possession, power or control of the owners or transferees and all books of accounts, registers and other documents of whatever nature relating thereto.

(2) All properties aforesaid, which have vested in the State Government u/s 3 shall, by virtue of such vesting be freed and discharged from any trust, obligation, mortgage, lease, charge, lien and all other encumbrances affecting them and any attachment, injunction or decree or order of any Court or any authority restricting the use of such property, in any manner shall be deemed to have been withdrawn.

(3) Every mortgage of any property which has vested under this Act, in the State Government and every person holding any charge, lease, lien or other interest in or in relation to any such property shall give within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, lease, charge, lien or other interest.

(4) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in Sub-section (3) or any other person holding any charges, lease, lien or other interest in or in relation to any such property shall be entitled to claim in accordance with his rights and interest payment of the mortgage money or other dues in whole or in part out of the amount specified in Section 7 and also out of the amount determined u/s 8 but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the State Government.

(5) If on the appointed day, any suit, appeal or other proceeding of whatever nature, in relation to any property which has vested in the State Government u/s 3 instituted or preferred by or against the owners or transferees, is pending the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the estate or anything contained in this Act but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the State Government or, where the estate is directed u/s 6 to vest in the Board by or against the Board.

29. Subsequently, during the pendency of the present litigation, the State Legislature in order to meet certain objections raised in the present proceedings, regarding workability of the Act has passed the Roerich and Devikarani Roerich Estate (Acquisition and Transfer) (Amendment) Act, 2001 inserting Section 19A which provides for disbursement of amount to the owners, transferees and other interested persons. The said new section reads as under :--

19A. Disbursement of amount to the owners, transferees and other interested persons.-- (1) If out of the amount paid to him in relation to the estate, there is a balance left after meeting the liabilities specified in Schedule-II, the Commissioner shall disburse such balance to the owners, transferees and other interested persons.

(2) Before making any payment to the owners, transferees and other interested persons in proportion to their interest in the Estate, the Commissioner shall satisfy himself as to the right of such owners, transferees and other interested persons to receive the whole or any part of such amount and in the event of there being a doubt or dispute as to the right of such owner, transferee or other interested persons to receive the whole or any part of the amount referred to in Sections 7 and 8, including apportionment of the amount among them, the Commissioner shall refer the matter to the Court and make disbursement in accordance with the decision of the Court.

(3) The Court shall decide the appointment of amount among the owners, transferees and other interested persons in relation to the estate having due regard to the value on the appointed day, of the property forming part of the estate.

(4) Notwithstanding anything contained in this Act evidence shall be admissible to establish before the Court right, title and interest of the owners, transferees or other interested persons in relation to the estate.

Re : Public Purpose :

30. The public purpose for which the Estate has been acquired is writ large from the provisions of the Acquisition Act and the objects and reasons for which the Acquisition Act has been enacted. The Roe Richs had acquired international fame and reputation because of their extraordinary contribution in the fields of great public interest like arts and painting and performance of very high order. Late Roe Richs always desired that their properties should form corpus of the trust and should be utilised for public purpose for which they strived all through their life. They also wanted that all efforts should be made to preserve and encourage literary and artistic work. Therefore, the legislature having found that various persons having ulterior motives to appropriate the Estate to their personal benefit though it necessary to intervene and acquire and preserve the properties in a desired manner. This is very well reflected u/s 22 of the Acquisition Act which reads as under :--

22. Powers and duties of the Board.--Subject to the rule made under this Act, the powers and duties of the Board shall be :--

- (a) to administer and manage the Estate;
- (b) to establish and maintain Art Gallery-cum-Museum in the name of Dr. S. Roerich and Mrs. Devikarani Roerich;
- (c) to lay-out and maintain public park and to preserve tree growth in the Estate;
- (d) to cultivate and protect linaloe crop in the Estate;
- (e) to take all necessary steps for collection of paintings and Art pieces and other literary works of Dr. S. Roerich and Mrs, Devikarani Roerich;

(f) to levy, subject to such condition as the State Government may impose, fees for entry into the public parks and Museum-cum-Art Gallery; and

(g) to do such other acts as may be prescribed and as are incidental or conducive to the efficient administration of the Estate by the Board.

31. Therefore, it cannot be disputed that the Estate of the Roe Richs have been acquired for a professed public purpose which the State Legislature was competent to do under its legislative wisdom.

Re : Adequacy of Compensation

32. The validity of the Amending Act has been questioned inter alia on the ground that the amount of compensation provided under Sections 7 and 8 of the Acquisition Act is not adequate since it is nowhere near the market value of the property sought to be acquired. Sections 7 and 8 of the Acquisition Act provide provisions for quantification of the amount of compensation which has to be paid to the persons found to have interest in the Estate. Sections 7 and 8 of the Acquisition Act reads as under :--

7. Amount to be given to owners, transferees and other interested persons.-- For the transfer to and vesting in the Government of the Estate u/s 3 and the right, title and interest in relation to the Estate, the Government shall pay an amount of rupees five hundred lakhs by depositing the same with the Commissioner and the said amount shall be paid to the owners, transferees or such other persons entitled thereto in the manner specific in Chapter IV.

8. Payment of further amounts.-- (1) The amount specified in Section 7 shall carry simple interest at the rate of four per cent per annum for the period commencing on the appointed day and ending on the date on which payment of such amount is made by the State Government to the Commissioner.

(2) The amount determined in accordance with the provisions of Sub-section (1) shall be given by the State Government to the owners, transferees and such other persons entitled thereto, as the case may be, in addition to the amount specified in Section 7.

(3) For the removal of doubts it is hereby declared that the liability of the owners or transferees in relation to the Estate which has vested in the State Government u/s 3 shall be discharged from out of the amount referred to in Section 7 and also from out of the amounts determined under Sub-section (1) in accordance with the rights and interest of the creditors of the owners or transferees, as the case may be.

33. The question is as to whether the Court, for the purpose of finding out the constitutional validity of Acquisition Act, can examine adequacy of the compensation provided vis-a-vis market value and in case it is found that the compensation provided by the legislature is found to be deficient of the market value, can the acquisition envisaged by the legislature be said to be ultra vires its

legislative powers.

34. In the case of Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., the question before the Supreme Court was whether the owner of the property is entitled to compensation i.e. just equivalent or indemnification to the owner of the property expropriated (See para 49). The Supreme Court after reviewing all its earlier judgments on the point and by taking into account the Constitution (49th Amendment) Act 1978, by which Article 31 was deleted from Part III of the Constitution and Article 300-A was inserted, has held that :--

"The constitutional history of the interpretation of the powers of the Parliament to amend the Constitution under Article 368 from Kameshwar Singh to Kesavanand Bharti to give effect to the directive principles in Part IV vis-a-vis the right to property in Articles 19(1)(f) and 31 as well as the interpretation, "compensation" from Ms. Bela Benerji to Banks Nationalisation's case do establish that the Parliament has ultimately wrested the power to amend the Constitution, without violating its basic features or structure. Concomitantly legislature has power to acquire the property of private person exercising the power of eminent domain by a law for public purpose. The law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate. The amount fixed must not be illusory."

35. In the present case, the Parliament has provided a sum of Rs. 5 crores for payment of compensation against acquisition of the Estate which by no means can be said to be illusory in nature. Whether this amount is adequate or not is beyond the can of judicial scrutiny. Therefore, in this view of the matter, challenge made to the Acquisition Act on the ground of non-providing adequate compensation also falls.

Re : Validity of the Amending Act

36. The petitioners have questioned the constitutional validity of the Roerich and Devikarani Roerich Estate (Acquisition and Transfer) (Amending) Act. 2001 (in short the Amending Act) on the ground that it has not been reserved for the consideration of the President and has received his assent as required under Clause (2) of Article 254 of the Constitution. In our opinion, the ground taken is devoid of any merit. The Principal Act by which the Estate has been acquired had received presidential assent. So far as the Amending Act is concerned, it has only provided for machinery for paying compensation to the persons who may be found to be entitled to and in case of any dispute or doubt, the Commissioner is required to refer the matter to the Court and make disbursement in accordance with the decision of the Court. Under Sub-section (3) of Section 19A of the Amending Act, the Court has to decide the apportionment of amount among the owners, transferees and other interested persons in relation to the Estate.

37. It cannot be disputed that Section 19A has been made to safeguard the interest of persons who in law may be entitled to receive compensation. Similar provision is there u/s 18 of the Land Acquisition Act, 1894 for reference to the Court. Therefore, it cannot be said that the provisions made through amendment in the Acquisition Act is in any way repugnant to any central legislation. The objection taken by the petitioner regarding validity of the Amending Act thus fails.

38. Re : Constitutional validity of inclusion of foreign nationals in the Board of Trustees constituted u/s 21 of the Acquisition Act for administration and Management of the Estate. This Section reads as under :--

21. The Board of Trustees.-- (1) There shall be a Board of Trustees for the administration and management of the Estate, consisting of the following : --

1. The Chief Secretary to Government of Karnataka

. . . .Chairman

2. The Principal Secretary to Government Revenue Department, Government of Karnataka

. . . .Member

3. The Secretary to Government, Department of Law. Government of Karnataka.

. . . .Member

4. The Secretary to Government, Incharge of Forest Department, Government of Karnataka.

. . . .Member

5. The Secretary to Government, Agriculture & Horticulture Department, Government of Karnataka.

. . . .Member

6. The Secretary to Government, Kannada and Culture Department, Government of Karnataka.

. . . .Member

7. A person to represent the State Lalitha Kala Academy to be Nominated by the State Government.

. . . .Member

8. Secretary, Department of Culture, Government of India or his representative

. . . .Member

9. Foreign Secretary, Ministry of External Affairs, Government of India or his Representative.

. . . .Member

10. Ambassador of the Russian Federation in Delhi.

. . . .Member

11. Head of Culture Department Of the Embassy of the Russian Federation or his successor in office

. . . .Member

12. Prof. A. A. Kutsenkov, Director, Centre of Indio logical Studies, Russian Academy of Sciences or His successor in office.

. . . .Member

13. Mr. V. V. Anisimov, Vice-President, Russian Indian Arts Club, Moscow Or his successor in office.

. . . .Member

14. A person to represent the Karnataka Chitrakala Parish at to be nominated By the State Government.

. . . .Member

15. The Executive Officer

. . . .Member Secretary

(2) The Board shall meet at such time, at such place and shall conduct its business in such manner as may be prescribed.

39. The members at Sl. Nos. 10 to 13 are Russian nationals. Their inclusion in the Board of Trustees has been questioned on the ground that by such an Inclusion, the powers of administration and management of public property has been parted with the foreigners, one such member is the Ambassador of Russian Federation, which is Impermissible under the basic structure of the Constitution of India as also under the distribution of legislative and executive powers thereunder.

40. So far as the above aspect is concerned, we have to bear in mind that under the preamble to the Constitution there is an unambiguous declaration that we have constituted India into a sovereign state. Undisputedly, it is one of the most fundamental features of our Constitution. If that be so, no legislature either Union or State can make any law which can in any way even remotely or indirectly part away with the sovereignty of the country. The management and administration of public property is essentially a sovereign power, which, under the Constitution has been entrusted to the State. The State legislature, under its law making powers, can no doubt create appropriate agency like Board of Trustees for management of the Estate as has been done u/s 21 of the Acquisition Act, but it cannot in the guise of such an exercise include foreign

nationals or sovereign countries through its representatives to manage the public properties. This amounts to abdication of essential sovereign power to a foreign country through its Ambassador and would amount to damaging or destroying one of the basic structures of the Constitution of India.

41. Apart from the above, the total field of "foreign affairs" belongs to the Parliament. The relevant entries in List-I are 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 25, 83, 57. Reading of these entries clearly show that any aspect of the external sovereignty, if at all can be found to have been left out, would be well covered by Article 248 and Entry 97 of List I. Article 248 clearly declares that the Parliament has exclusive powers to make any law with respect to any matter not enumerated in the Concurrent List or State List and Article 73 provides that executive power of the Union is given extensive with its exclusive legislative power.

42. In the above view of the matter, even if there was a need to assure a foreign sovereign like Russia that the assets left by late Dr. S. Roerich, who was born in Russia, will be appropriately looked after as per his desire and the international stature he has acquired, still that could not have been done by permitting them to participate in the management of the property vested in the State Government under a State law. If at all any such assurance was required to be carried out this could have been done only by the Parliament and not by State Legislature even with the assent of the President obtained under Article 254(2) of the Constitution, Article 254(2) cannot save the State legislation where the subject essentially falls under List-I and the State legislation can survive and fulfil its purpose without incorporation of its ultra vires part. In such situation, even the doctrine of pith and substance will have no play. In the present case, by applying these constitutional parameters. It can be safely said that non-inclusion of members at Sl. Nos. 10, 11, 12 and 13 in the Board of trustees cannot in any way impinge upon the working of the Acquisition Act.

43. For these reasons, inclusion of members at Sl. Nos. 10, 11, 12 and 13 in the Board of Trustees is held to be ultra vires the powers of the State Legislature and therefore constitutionally invalid. With this declaration they cease to be members of the Board of Trustees constituted u/s 21 of the Acquisition Act and cannot in any way associate with administration and management of the Estate.

44. In conclusion, neither Section 110 of the Land Reforms Act and the notification issued thereunder being Annexure "D" nor the Acquisition Act, except in relation to the inclusion of members at Sl. Nos. 10, 11, 12 and 13 in the Board of Trustees, can be held to be ultra vires the powers of the State Government and therefore challenge made to their validity fails.

45. For the aforesaid reasons, the writ petitions are dismissed. The parties to bear their own costs.