
(1987) 07 CAL CK 0032

In the Calcutta High Court

Case No : C.R. No's. 11382 (w) of 1982, 8743 (w) of 1983, 10761 (w) of 1984 and 14566 (w) of 1985 and etc. etc.

Lakshmimoni Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-07-1987

Acts Referred:

Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 — Section 19, 27, 5, 6(2), 8(2)
Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 — Rule 3, 5, 5(1)
Constitution of India, 1950 — Article 14, 25, 26, 31C, 39

Citation : AIR 1987 Cal 326 : (1987) 1 CALLT 371 : 92 CWN 72

Hon'ble Judges : Monoranjan Mallick, J;G.N. Ray, J;Bhagabati Prosad Banerjee, J

Bench : Full Bench

Advocate : Pradosh Kr. Mallick, Chandana Mitra, Sipra Das and Pronab K. Chatterjee, S. Pal, D. Mukherjee, J. Gupta, Indira Banerjee, Bhaskar Gupta, Dilip Dhar, Samir Chakraborty, Abhijit Chatterjee, Bijon Majumdar, Abdul Latif, Swadesh Bhunia, P.K. Chatterjee, R.N. Das, S.K. Majumdar, A.K. Motilal, S.K. Gupta, B.L. Jain, A.N. Mukherjee, M.D. Jajodia, N. Nayak, S.P. Chatterjee, B.K. Bhowmick, Amitava Choudhury, Kanan Kr. Ghose, Dilip K. Haldar, N.L. Nayak, Arabinda Sen, S. Ataunnabi and Partha Datta, for the Appellant; M.N. Ghose and Dhruba Bhattecharjee for Official Receiver, Sadhan Gupta, A.A.G., Arun Prakash Chatterjee, Standing Counsel, M. Gupta, Samir K. Banerjee and S. Mustafi, for the Respondent

Judgement

G.N. Ray, J.—This Rule namely C.R. No. 11382(W) of 1982 has been heard analogously with other Civil Rules because common questions of law are involved in all these cases. Civil Rule No. 11382(W) of 1982 and a number of other writ cases challenging the vires of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 came up for hearing before a Division Bench of this Court. On 12th December, 1985, the said Division Bench was pleased to make a reference to the Special Bench by the following order : --

"These groups of writ petitions challenge the vires of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. On the question of applicability of the Act to certain kinds of land, it may become necessary to reconsider a Division Bench decision of this Court in Appeal No. 239 of 1978 (Jatadhari Daw & Grandsons v. Smt. Radha Debi) pronounced on September 6, 1985 (reported in 1986 (1) CHN 21). We deem it desirable that these groups of writ petitions may properly engage the attention of the Special Division Bench. Other questions raised in these writ petitions relate to substantial questions of law of general importance. In the circumstances, the entire cases may be referred to the Special Division Bench.

Let the papers be placed before the Hon"ble the Chief Justice for necessary orders."

2. As the said Rules have been heard analogously, the judgment passed in Civil Rule No. 11382(W) of 1982 will from the basis of the judgment of all the writ cases heard analogously and the special facts concerning some of the writ proceedings will be mentioned whenever reference to such special facts will be necessary for the disposal of such Rules.

3. Mr. S. Pal, the learned counsel appearing for the petitioners in C.R. No. 11392(W) of 1982 has made the principal argument because Civil Rule No. 11382(W) of 1982 was taken up first for hearing and the learned counsel appearing in other matters have indicated the special facts concerning their cases and have only supplemented the main argument advanced by Mr. Pal on points which, according to the learned counsel, require to be highlighted specifically. As Mr. Pal has made the principal argument, we intend to refer to his arguments in some detail. The arguments of other Ld. Counsel for the petitioners will be referred if and when necessary.

4. In the Civil Rule No. 11392(W) of 1982, two principal reliefs have been sought for by the writ petitioners viz. (i) a declaration that the Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981 (hereinafter referred to as impugned Act) has no application to the properties mentioned in the writ petition and (ii) a declaration that the impugned Act is ultra vires the Constitution. The factual aspects of the case have been indicated in the writ petition and also in the supplementary affidavit particularly in paras 7 to 17 of the supplementary affidavit. No affidavit-in-opposition has, however, been filed by the State respondents either to the writ petition or to the supplementary affidavit. The relevant and essential facts which emerge from the writ petition and the supplementary affidavits are (a) the petitioners are the owners of ten properties as mentioned in para 7 of the supplementary affidavit and (b) the land comprised in the ten properties mentioned in the schedule had been let out to the tenants on which pucca structures had been constructed by the respective lessees. The Municipal assessment records since annexed to the supplementary affidavit show that the said structures existing on the lands in question are pucca structures. In the absence of any affidavit-in-opposition filed by the State

respondents either to the writ petition or to the supplementary affidavit, the Court may proceed on the footing that the factual features as indicated by the writ petition are not in dispute.

5. The submissions made by Mr. S. Pal on behalf of the petitioners in C.R. No. 11382(W) of 1982 may be summarised under two broad heads : (a) What is the scope, ambit and effect of the provision of vesting as contained in Section 5 of the impugned Act? (b) Whether the impugned Act is ultra vires the Constitution?

6. On the scope, ambit and effect of provisions of vesting u/s 5 of the impugned Act it has been contended by Mr. Pal that the vesting of land as referred to in Section 5 is confined to land comprised in thika tenancy and to no other land, (b) alternatively and/or at the highest the vesting is confined to lands comprised in thika tenancy and also the lands used or occupied as khatahs, but to no other lands. On the question of constitutional validity of the impugned Act it has been contended by Mr. Pal that (i) the impugned Act is ultra vires Articles 14, 19, 21 and 26 of the Constitution, (ii) the impugned Act is unworkable having regard to the scheme of the Act, (iii) the impugned Act is bad on the ground of non-application of mind (iv) the impugned Act is bad on the ground of abdication of essential legislative function and/or delegation of essential legislative function, (v) the impugned Act is ultra vires because of lack of legislative competence and (vi) the impugned Act is bad for vagueness and uncertainty.

7. On the scope, ambit and effect of the provisions of vesting as contained in Section 5 of the impugned Act, Mr. Pal has contended that a close scrutiny of the said section will unmistakably point out that only lands comprised in thika tenancy are intended to be vested under the said provisions of Section 5 and in any event, if the said section is given a very liberal construction the vesting contemplated u/s 5 of the impugned Act relates to lands comprised in thika tenancies and other lands comprising and/or used as khatahs and no other land or structure is affected by Section 5. For the purpose of appreciating the scope and ambit of Section 5, the provisions of Section 5 are set out hereunder : --

"5. Lands comprised in thika tenancies and other Lands, etc. and right, title and interest of landlords in such lands to vest in the State. With effect from the date of commencement of this Act, lands comprised in thika tenancies and other lands held under any person in perpetuity or under registered lease for a period of not less than twelve years or held in monthly and periodical tenancies for being used or occupied as khatahs along with easements, customary rights, common facilities and such other things in such thika tenancies and khatahs attached to or used in connection with such thika tenancies, and khatahs and the right, title and interest of landlords in such lands shall vest in the State free from all encumbrances :

Provided that the easements, rights, common facilities or benefits enjoyed by a thika tenancy or an occupier of any land under any person in perpetuity or any land under any person under registered lease for a period of not less than twelve

years or a khatal in khas lands of the landlords shall not be affected in any way by such vesting."

8. In this connection it will be also necessary to refer to the definition of thika tenant as referred to in Section 3(8) of the Impugned Act.

"Section 3(8). "Thika tenant" means any person who occupies whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for residential manufacturing or business purpose and includes the successors-in-interest of such person."

9. Referring to Section 5 of the impugned Act, Mr. Pal has contended that Section 5 has two main limbs, namely (i) lands comprised in thika tenancy and (ii) other lands including khatal lands. According to Mr. Pal, the following questions arise for the consideration of the Court : --

i) What is meant by lands comprised in thika tenancy in the first limb?

ii) What lands are referred to in the second limb?

10. He has contended that the answer to these questions depend upon correct and proper appreciation and ascertainment of the scope and purpose of the impugned Act and in particular the provisions of vesting in Section 5 and for this purpose the impugned Act must be read as a whole and the every word of Section 5 has to be examined in the context of the Impugned Act. Mr. Pal has argued that "context" should be understood in a wider sense as Viscount Simonds has said in a decision of the House of Lords in the case of Attorney General v. H.R.H. Prince Ernest Augustus of Hanover, reported (in 1957 (1) All ER 49 . It has been held in the said decision that "so it is that I conceive it to be my right and duty to examine every word of a Statute in its context, and I use context in its widest sense which I have already indicated as including not only other enacting provisions of the same Statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy." Mr. Pal has submitted that the existing state of law governing the thika tenancy is to be found in the Calcutta Thika Tenancy Act, 1949. The Preamble of the said 1949 Act is in the following terms : --

"Whereas it is expedient to make better provisions relating to the law of landlord and tenant in respect of thika tenancies in Calcutta."

11. The definition of thika tenant, as originally contained in Section 2(5), Calcutta Thika Tenancy Act 1949 was in the following terms : --

"Section (5) "Thika tenant" means any person who under the system commonly known as "thika", "thika masik utbandi", "thika masik", "thika bastu" or under any other like system holds, whether under a written lease or otherwise, or has

been recorded in any record of rights as holding, under the title "dakhal basatkar" or other like appellation, land under another person and is, or but for a special contract would be, liable to pay rent, at a monthly or at any other periodical rate, for that land to such other person and has erected any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person;"

12. The aforesaid definition was amended by the Calcutta Thika Tenancy (Amendment) Act and Section 2(5) of the 1949 Act was substituted by the following : --

"(5) "thika tenant" means any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, as a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such persons, but does not include a person --

(a) who holds such land under that another person in perpetuity; or

(b) who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; or

(c) who holds such land under that another person and uses or occupies such land as a khatal."

13. The object of the amendment as stated in the statement of objects and reasons printed in Calcutta Gazette Extraordinary Part IV dated 9th February, 1953 at page 191 is as follows : --

"The expression "thika tenant" as defined in the Calcutta Thika Tenancy Act 1949 has been interpreted by the Courts in a manner as virtually to deny the protection of the Act to the persons for whom it was intended. As the decisions adversely affected a large number of persons, it was considered urgently necessary in the public interest to amend the Act by an Ordinance with a view to giving relief to such persons."

14. The Calcutta Thika Tenancy (Second Amendment) Act 1969 made certain further amendments in the 1949 Act. Section 2 of 1969 Amendment Act inserted definition of pucca structure in Section 2(4 A) of the 1949 Act in the following terms : --

"(4a) "pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials."

15. By Section 10 of the 1969 Act a new Section 10A in the 1949 Act has been added to the following effect : --

"10A. Right of thika tenant to erect pucca structures.-- (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, but subject to the provisions of Sub-sections (2) and (3), a thika tenant using the land comprised in his holding for a residential purpose may erect a pucca structure on such purpose with the previous permission of the Controller.

(2) On an application made by a thika tenant in this behalf, the Controller may grant him permission to erect a pucca structure, if the Controller is satisfied that thika tenant --(a) is using the structure existing on the land comprised in his holding for a residential purpose; (b) intends to use the pucca structure to be erected on such land for a similar purpose, and (c) has obtained sanction of a building plan to erect the pucca structure from the municipal authorities of the area in which such land is situated.

(3) No thika tenant shall be entitled to eject a bharatia from the structure or part thereof in the possession of the bharatia for the purpose of erecting a pucca structure :

Provided that the thika tenant may be providing temporary alternative accommodation to a bharatia to obtain from him vacant possession of the structure in his possession on condition that immediately on the completion of the construction of the pucca structure the thika tenant shall offer the bharatia accommodation in the pucca structure at a rent which shall in no case exceed by more than twenty five per centum the rent which the bharatia was previously paying."

16. Mr. Pal has also drawn the attention of the Court to Sub-sections (3), (4) and (7) of Section 3 of the impugned Act for the purpose of elaborating his submissions on the scope, ambit and effect of the provisions of vesting u/s 5. For appreciating the submissions of Mr. Pal, the provisions of Sub-sections (3), (4) and (7) of Section 3 of impugned Act are also set out hereunder : --

"3.(3) "Holding" means a parcel or parcels of land occupied by any person as a thika tenant under one lease or one set of conditions where such tenant has been occupying the land from or before the commencement of this Act."

"(4) "Landlord" means any Corporation, institution or person who, for the time being entitled to receive or but for a special contract, would be entitled to receive, the rent of any land comprised in a thika tenancy and includes any Corporation, institution or person having any superior interest in such thika tenancy".

"(7) "pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials or any other material of a durable nature".

17. Incidence of tenancies in respect of the lands vested in the State u/s 5 of the impugned Act has been provided in Section 6. The provisions of Section 6 of the impugned Act are set out hereunder : --

"(1) Subject to the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) and the provisions of this Act, every thika tenant and any tenant, in respect of other lands which vest u/s 5, occupying any land under a landlord on the date of commencement of this Act shall occupy such land, on such terms and conditions as may be prescribed, directly under the State as if the State had been the landlord in respect of that land.

(2) Subject to the provisions of Section 26 of this Act, every thika tenant and other tenants occupying land directly under the State under Sub-section (i) shall be liable to pay to the State an amount of revenue determined in accordance with the provisions of the West Bengal Land Holding Revenue Act, 1979 (West Beng. Act XLIV of 1979) and for this purpose such tenant shall be deemed to be a raiyat under that Act.

Provided that the revenue payable by the tenant shall not be less than what he was paying to the landlord before the coming into force of this Act.

(3) The rights of a thika tenant and other tenants occupying lands directly under the State under Sub-section (1) shall, subject to the provisions of this Act, be heritable and shall not be transferable. No such tenant shall, without obtaining prior approval in writing from such authority as may be prescribed and without submitting a comprehensive development plan or improvement scheme for the holding construct pucca structure. Any such scheme shall provide for alternative accommodation for bharatias in accordance with Sub-section (2) of Section 11.

Provided that a thika tenant or a tenant in respect of other lands which vest u/s 5 may construct a pucca structure for essential common facilities like common pathway, common bath, toilet, water supply, drainage, sewerage, lighting and similar other purposes."

18. Mr. Pal has contended that on a reference to various provisions of the impugned Act it appears that the nature and extent of the rights of the persons referred to in Section 6 are contained in Section 7 and Section 8 of the impugned Act deals with the compensation. Sections 9 and 11 regulate the incidence of relationship between thika tenants and bharatias. Section 19 provides for abatement of legal proceedings. Section 20 confers power on the State Government to make rules and Section 21 repeals the Calcutta Thika Tenancy Act, 1949. Section 26 deals with the revenue to be paid to the State by purporting to apply West Bengal Land Holding Act, 1979 mutatis mutandis. Section 27 contains provisions relating to the disposal of the land vested in the State and is in the following terms : --

"Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force and subject to the provisions of Urban Land (Ceiling and Regulation) Act 1976 it shall be competent for the State Government to make use of, or settle with any person or authority, any land or structure vested in or resumed by the State under this Act to subserve the common good on such terms and conditions and in such manner as may be prescribed."

19. Pursuant to power conferred by Section 20 of the impugned Act, rules have been framed called as the Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982. Mr. Pal has submitted that Rule 3 and Rule 10 are relevant for the consideration of the scope, ambit and effect of the provision of vesting u/s 5. Referring to the expression "lands comprised in thika tenancy" as appearing in the first limb of Section 5, Mr. Pal has contended that the definition of the expression "thika tenant" in Section 2(5) of Calcutta Thika Tenancy Act, 1949 has been the subject matter of judicial interpretation and consideration in several decisions of this Court. In these decisions it has been held that (a) the expression "any structure" in Section 2(5) of the 1949 Act means kutcha and for non-pucca structure and reference may be made to the decisions of this Court in the case of Monmatha Nath Mukherjee Vs. Sm. Banarasi and Others, . It has been held by a single Judge of this court that thika tenant is not entitled to put up a permanent structure on the land. The Division Bench consisting of P. B. Mukherjee and R. S. Bachawat JJ. (as their Lordships then were) held that the expression "thika tenancy" had imported a concept of temporariness. Even after the 1969 Amendment of the Calcutta Thika Tenancy Act, 1949, the Division Bench of this Court in the decision made in the case of Furushottam Das Murarka Vs. Harendra Krishna Mukherjee, has observed to the following effect : --

"But there cannot be any doubt and it is also not disputed on behalf of the appellant that, if during the pendency of his lease, a thika tenant constructs or attempts to construct pucca structure on the demised land without the permission of the landlord, he does not cease to be a thika tenant."

20. Mr. Pal has further submitted "Thika" is a Bengali word and the meaning of the said Bengali word has been given in the Bengali to English Dictionary published by Sahitya Samsad, First Edition (1976 Reprint) to the following effect:

"Thika proja = holding possession temporarily for a fixed period."

21. Similar meaning is also ascribed to the word "thika" in the well-known Bengali Dictionary "Chalantika" at page 513. Mr. Pal has submitted that when a legislature uses a legal term which has received judicial interpretation in an Act without qualification it must be assumed that the term is used in the sense in which it has been judicially interpreted. Such rule of interpretation has been clearly laid down by the Supreme Court in the case of P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, and in the case of Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, . Mr. Pal has submitted that since the expression "any structure" has been retained in Section 3(8) of the impugned Act, in the absence of any other indication to the contrary, it must be assumed that the legislature has used the expression "any structure" in the sense in which it has been judicially interpreted, i.e. kutcha structure. Mr. Pal has submitted that the Thika Tenancy (Second Amendment) Act, 1969 conferred a limited right on the thika tenant holding for a residential purpose to apply for construction of pucca structure with the permission of the Thika Controller u/s 10(A), Thika Tenancy Act, 1949. This enabling provision

would not have been necessary if the thika tenant had initially the right to construct a pucca structure. The amendment Act of 1969 incorporating the new provisions of Section 10A conferring a right on the thika tenant holding for residential purpose to erect pucca structure with the leave of the Thika Controller is an implied admission on the part of legislature that the thika tenant has otherwise no right to construct a pucca structure by virtue of the incidence of thika tenancy. Mr. Pal has submitted that reference to Section 6(3) of the impugned Act will make it clear that the impugned Act provides for stricter restrictions on the thika tenant to make a pucca structure. Mr. Pal has next contended that it will be necessary to scrutinise what lands are" comprised in "other lands" in the second limb of Section 5. He has submitted in this connection that the title to the impugned Act is a pointer to the legislative intent. In this connection, the following passage from Cooley's "a treatise on the Constitutional Limitations" appearing at pp. 143 and 149 have been referred to by Mr. Pal. The said passages are set out hereunder : --

"It may therefore be assumed as settled that the purpose of these provisions was "first, to prevent hodge-podge, or "log-rolling" legislation, second, to prevent surprise or fraud upon the legislature, by means of provisions in bills of which the titles gave no intimation and which might therefore be overlooked and carelessly and unintentionally adopted, and, third to fairly apprise the people, through such publication of legislative proceedings as is usually made of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they shall so desire."

"As the legislature may make the title to an Act as restrictive as they please, it is obvious that they may sometimes so frame it as to preclude many matters being included in the Act which might with entire propriety have been embraced in one enactment with the matters indicated by the title, but which must now be excluded, because the title has been made unnecessarily restrictive. The Courts cannot enlarge the scope of the title; they are vested with no dispensing power; the Constitution has made the title the conclusive index to the legislative intent as to what shall have operation; it is no answer to say that the title might have been made more comprehensive, if in fact, the legislature have not seen fit to make it so. Thus an Act concerning promissory notes, bills of exchange, or other instruments in writing, for the payment of money, or for the delivery of specific articles, or to convey property, or to perform any other stipulation therein mentioned, should be negotiable, and assignees of the same might sue thereon in their own names. It was held that this Act was void, as to all the instruments mentioned therein except promissory notes and bills of exchange, though it is obvious that it would have been easy to frame a title to the Act which would have embraced them all, and which would have been unobjectionable."

22. Mr. Pal has submitted that three categories following "other lands" as referred to in Section 5 are identical as the excluded categories in Section 2(5) of the 1949 Act. He has therefore contended that the intention of the legislature

was not to exclude these categories any longer. But the legislature wanted to give a wider definition to thika tenant which it has done by Section 3(8) of the impugned Act. The expression "thika tenancy" in the first limb of Section 5 would therefore mean any land occupied by a person under a written lease or otherwise and on which he has erected any structure. The tenure of the tenant's occupation of the land is no longer a relevant factor. Mr. Pal has also contended that the legislature having deleted the exclusions in the new definition in Section 3(8) and having extended the field of thika tenancy to cover those exclusions, it was wholly unnecessary to expressly refer to them in Section 5 and reference to such exclusions are a mere surplusage. He has also contended that the intention of the legislature is to vest lands comprised in thika tenancies and such intention is clear from the following provisions of the impugned Act viz. Section 3(3), Section 3(4), Section 7, Section 13, Section 19 and Section 26. In all these sections, no land excepting the thika tenancy lands have been referred to. Mr. Pal has, however, submitted that as Khatalas have been specifically mentioned in both the first and second limb of Section 5 and as khatalas were initially excluded from the operation of Thika Tenancy Act, 1949, it may be contended at the highest that although the impugned Act primarily intends to vest the thika tenancies and to regulate incidence of such thika tenancies, it has also intended to vest lands comprising and/or used as khatalas.

23. Referring to the proviso to Section 5, Mr. Pal has contended that the said proviso deals with easement and other rights enjoyed by thika tenant. He has submitted that easement and customary rights etc. in the main enacting part refer to easements etc. enjoyed over thika tenancies and khatalas because thika tenancies and khatalas are servient tenements. Mr. Pal has contended that enjoyment in such a case has to be necessarily by persons who are not in possession of the servient tenements, i.e. thika tenancies and khatalas. The dominant tenements in these case will be lands in thika tenancies and khatalas. He has submitted that if thika tenancies and khatalas vest, then the proviso is not an exception and if besides such lands, any other category of land or structures vest, then to read the proviso as an exception would be absurd. Mr. Pal has submitted that the proviso to Section 5 deals with easements enjoyed (a) in khas land of the landlord; (b) by thika tenants and occupiers etc. This situation is not at all covered by the main enacting part and by abundant caution the proviso has been inserted. He has also contended that vesting of land comprised in thika tenancy is free from all incumbrances. An easement is an incumbrance on land and since the land vested u/s 5 must be free from incumbrances, it must necessarily be freed from easement on such land. He has therefore submitted that the proviso was added to "allay fears". In support of this contention that proviso is sometimes added to "allay fears". Mr. Pal has referred to a decision of the Appeal Court made in the case of West Derby Union v. Metropolitan Life Assurance Society reported in 1897 AC 647. Lord Herschell at p. 655 of the said report has observed to the following effect :--

"My Lords, I am satisfied that many instances might be given where provisions

could be found in legislation that are meaningless because they have been put in to allay fears when those fears were absolutely unfounded and when no provisos at all were necessary to protect the persons at whose instance they were inserted."

Mr. Pal has therefore contended that the first limb of Section 5 refers to lands comprised in thika tenancies. Mr. Pal has also contended that the thika tenancy in the impugned Act also comprises only kutchra structure for the following reasons : --

- 1) Consistent decisions of this Court holding "any structure" in Section 2(5) of the 1949 Act as excluding pucca or permanent structure and the Legislature must be presumed to have used the expression "any structure" in Section 3(8) of the 1981 Act in the same sense as judicially interpreted.
- 2) Lands comprised in pucca building would include vast residential, commercial or industrial complexes and it could not be the intention to take over such lands.
- 3) Implied admission by the legislature evidenced by, the Calcutta Thika Tenancy (Second Amendment) Act 1969 by conferring a right to apply to a residential thika tenancy right to make pucca structure, with the leave of the Thika Controller.
- 4) The intrinsic evidence in Section 3 of the impugned Act which provides that a thika tenant can construct pucca structure for limited purpose and in other cases only with approval and after submitting comprehensive development plan.
- 5) The use of words "thika tenant", "bharatia" etc. connotes temporariness.

Mr. Pal has contended that it would be unreasonable that if a pucca structure is also included within the expression "any structure" then a thika tenant would have to submit a comprehensive development plan for making insignificant further pucca structure.

24. Mr. Pal has contended that the second limb of Section 5 is only redundant and has been inserted by the legislature to "allay fears". He has contended that the title of the Act is the index of the legislative intent as referred to in the Cooley's Treatise quoted hereinbefore. The title does not refer to any other land. It only mentions thika tenancy. The three categories following "other lands" are identical as the excluded categories in Section 2(5) of the 1949 Act. Mr. Pal has contended that the legislature having deleted the exclusions in the new definition in Section 3(8) and having extended the field of thika tenancy to cover those exclusions, it was wholly unnecessary to expressly refer to them in Section 5, Mr. Pal has further submitted that khatahs are not intended to be taken over. The lands let out for being used as khatahs vest but the tenant using the land as khatal will continue to occupy the khatal and he becomes a direct occupant under the State, Hence, it could be held that Section 5 envisages the vesting of lands comprised in thika tenancy only and no other lands. He has, however, submitted that alternatively or at the highest, apart from thika tenancies, lands as khatahs

also come within the purview of vesting envisaged in Section 5.

25. Mr. Pal has submitted that Section 5 does not contemplate vesting of all types of vacant lands let out for different purposes other than purposes for comprising thika tenancies and khatalas. Mr. Pal has also contended that lands other than lands comprising thika tenancies and/or the lands used as khatalas are not intended to be acquired u/s 5 because the State cannot use the land even after the acquisition and the occupier will continue to occupy the land and no provision has been made for acquisition of pucca buildings or compensation for pucca buildings has been made in the impugned Act. Mr. Pal has contended that in any event, even at the highest the land used as khatal must not contain any pucca structure constructed on such khatal lands because there is no compensation provided for the pucca structure in the khatal land and it is also not the intention of the legislature to acquire pucca structure on the khatal lands. He has, therefore, submitted that Section 5 of the impugned Act really envisages for vesting of lands comprised in thika tenancy which in turn only means lands occupied by thika tenant who has constructed only a kutchha structure and the Division Bench decision of this Court made in the case of *Jatadhari Daw v. Smt Radha Devi*, reported in (1986) 1 CHN 21 (Appeal No. 239 of 1978) in so far as it decides that u/s 5 the land comprised in thika tenancy will vest u/s 5 is correct but the land being used or occupied as khatal will also come under the mischief of Section 5 should not be held to be a correct position of law. If, however, it is held that at the highest Section 5 also envisages vesting of land being used or occupied as khatal along with land comprised in thika tenancy and no other land, then it must be held that *Jatadhari Daw*'s case has been correctly decided by the Division Bench.

26. Coming to the question of vires of the impugned Act, Mr. Pal has contended that the Act violates Articles 14 and 19 of the Constitution and the Act also cannot get protection of Article 31-C of the Constitution. Mr. Pal has contended that Article 31-C of the Constitution was inserted by Constitution (25th Amendment) Act, 1971. But the later portion of the said Article 31-C to the effect "and no law..... shall be called in question in any Court....." was struck down by the Supreme Court in the decision made in the case of *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, . Section 4 of the Constitution (42nd Amendment) Act, 1976 was struck down by the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, . Mr. Pal has submitted that the net result is that Article 31-C as it stands today precludes a challenge to any law on the ground that it violates Articles 14 and 19, only if it gives effect to the directive principles contained in Article 39(b) and (c) of the Constitution. In other words, the umbrella of protection of an Act on a challenge of violation of Articles 14 and 19 of the Constitution is available only if the Act intends to give effect to the directive principles contained in Article 39(b) and (c) of the Constitution. Mr. Pal has however contended that the impugned Act does not give effect to directive principles contained in Article 39(b) and (c) of Part IV of the Constitution, Article 39(b) relates to ownership and control of material resources

to be distributed and it envisages that such distribution must serve the common good. Article 39(c) provides that operation of economic system does not result in the concentration of wealth and means of production. Mr. Pal has submitted that under Article 39(b) of the Constitution the ownership and control of material resources, which is land in the instant case, should be distributed as best to subserve the common good. He has contended that in order to attract Article 39(b), the impugned Act must enable the State to secure distribution of ownership and control in a manner which will be in common good. Mr. Pal has contended that to attract Article 39(b), mere distribution of ownership or mere distribution of control is not enough. Both the said distribution of ownership and distribution of control should be fulfilled because the expression "and" is conjunctive. Mr. Pal has submitted that in order to attract the provisions of Article 39(b), mere acquisition of material resources without anything more is not sufficient. After acquisition of the material resources the State must deal with the material resources in a manner which amounts to distribution of the ownership and control of the material resources acquired. He has submitted that the material resources should be dealt with in such a manner that the beneficial effect of that dealing is felt by the community at large. Mr. Pal has contended that possible resumption of land for public purpose in Section 7(3) of the impugned Act ipso facto demonstrates that enjoyment of the same by the thika tenant is not a public purpose.

27. Article 39(c) relates to operation of the economic system not resulting in concentration of wealth and means of production to common detriment. It is basically aimed at attacking monopolistic control of wealth and means of production. Mr. Pal has contended that holding of land-by itself does not result in the concentration of wealth. Otherwise, the holding of any property would amount to concentration of wealth necessitating the abolition of private property. Mr. Pal has contended that the law which intends to give effect to Article 39(c) must ensure that the operation of economic system does not result in the concentration of wealth-It should come in where there is concentration of wealth to common detriment. Mr. Pal has submitted that the lands of all types are held by innumerable persons belonging to the society. He has contended that even if holding of land is part of the economic system, Article 39(c) inhibits such holding to common detriment. Mr. Pal has also contended that in order to successfully claim the protection of Article 31-C it must be established that there is a nexus between the law and Article 39(b) and (c) and such nexus should not be remote or tenuous. In this connection, Mr. Pal has referred to a decision of the Supreme Court made in the case of *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, . The Supreme Court has held to the following effect: --

"Of course, the law seeking the immunity afforded by Article 31-C must be a law directing the policy of the State towards securing Directive Principle. Here, we are content to use the very words of Article 31-C. While we agree with Bhagwati, J. that the object of the law must be to give effect to the Directive Principle and

that the connection with the Directive Principle must not be "some remote or tenuous connection", we deliberately refrain from the use of the words "real and substantial", "dominant", "basically and essentially necessary" and "closely and integrally connected" lest any one chases after the meaning of these expressions, forgetting for the moment the words of the statute as happened once when the words "substantial and compelling reasons" were used in connection with appeals against orders of acquittal and a whole body of literature grew up on what were "substantial and compelling reasons". As we have already said, we agree with much that has been said by Bhagwati, J. and what we have now said about the qualifying words is only to caution ourselves against adjectives getting the better of the noun. Adjectives are attractive forensic aids but in matters of interpretation they are diverting intruders. Those observations have the full concurrence of Bhagwati, J."

28. Mr. Pal has submitted that the object of the impugned Act as professed in the preamble is to provide for the acquisition of certain types of lands for the following purposes : --

(1) for planned development of such lands with a view to subserve the common good;

(2) for regulation of :

(i) incident of thika tenancies;

(ii) monthly or periodical tenancy; and relation between thika tenants and their bharatias.

Mr. Pal has submitted that it is therefore apparent that dominant object of the impugned Act is to acquire certain types of lands. Mr. Pal has submitted that law which will seek protection of Article 31-C must contain compulsive provisions for distribution of ownership and control to subserve the common good. Mere enabling provisions will not give the protection. In the impugned Act there is no compulsive provisions for distribution. It only enables the State Government to acquire if the State Government so desires and there is no occasion for the landlord to complain at later stage if the State does not exercise the powers of acquisition after the vesting of landlord's interest. Mr. Pal has also submitted that although the Act professes for acquisition of land for regulation of incidents of thika tenancy and relations between thika tenants and bharatias, the impugned Act does not provide for any distribution of ownership and control of material resources. The Act also does not provide for the distribution of material resources by regulating the relationship between landlord and tenant. Mr. Pal has further submitted that no substantial or real benefit has been conferred on the thika tenants under the impugned Act. On the contrary, the thika tenant's tenancy interest in the land is sought to be abolished without payment of any compensation. He has further submitted that in the 1949 Act, a thika tenant could be ejected only on limited grounds as contained in Section 3 of 1949 Act and the thika tenant was entitled to notice before ejectment as contained in

Section 4 of the 1949 Act. The thika tenants had also protection even after ejection as contained in Section 7 of the 1949 Act. Under the impugned Act, the position of the thika tenant is extremely precarious. He has mere occupancy right and is liable to be summarily ejected as provided in Section 1(2) read with Rule 3(n) of the Rules. Mr. Pal has contended that in the event of construction by a thika tenant on the land occupied by bharatia, the bharatia will get the area which was under his occupation- He has therefore, contended that the thika tenant has been deprived of the benefits conferred by the 1949 Act and his position has become quite precarious under the impugned Act. Mr. Pal has also contended that the impugned Act also does not benefit the bharatias. Section 9 of the impugned Act does not give any improved status to bharatia. Even before the impugned Act, the bharatia was governed by West Bengal Premises Tenancy Act, 1956 and no better protection has been given to the said bharatia under the impugned Act. Mr. Pal has submitted in this connection that the decision of this Court made in the case of Universal Trading Co. Vs. Prafulla Kumar Sarkar and Another, that incidence of tenancies of bharatia vis-a-vis the thika tenant was not governed by West Bengal Premises Tenancy Act is not correct. He has contended that since bharatia occupies a structure built by thika tenants, he becomes a tenant within the definition of the West Bengal Premises Tenancy Act, 1956 and there is no reason as to why the tenancy of bharatia vis-a-vis the thika tenant should not be governed by the West Bengal Premises Tenancy Act, 1956. Mr. Pal has contended that the Special Bench can overrule the Bench decision of this Court made in the said case I reported in Universal Trading Co. Vs. Prafulla Kumar Sarkar and Another, . In support of the contention that the Special Bench has a power to overrule the decision of a Division Bench, Mr. Pal has referred to two decisions of this Court reported in Sk. Bafatulla Mukhtear and Others Vs. State of West Bengal and Others, and Tara Dutta Vs. The State and Another, . Mr. Pal has contended that if the structure possessed by bharatia ceases to exist as contemplated in Section 11(2) of the impugned Act and the thika itenant chooses not to make any building within 12 years, the bharatia becomes homeless and he loses the right to the building to be constructed in future. He has also contended that there is no compulsion to rebuild a structure u/s 11 of the impugned Act. Mr. Pal has contended that no building is likely to be erected by a thika, tenant on the land where the earlier structure possessed by the bharatia had ceased to exist and the bharatia continues to pay rent although the structure is no longer there. There is no provision to make alternative accommodation of bharatia in such circumstances. Mr. Pal has also contended that a bharatia will get the benefit of Section 11(2) only if a thika tenant builds on the same site and not on other site. Mr. Pal has further contended that if for the default of the thika tenant to make any construction of the structure which had been possessed at one point of time by a bharatia, the State obtains possession of such vacant land, the bharatia is ousted for the simple default of the thika; tenant. Mr. Pal has contended that the structure of a thika tenant vests u/s 7(2), but there is no provision for elevation of bharatias as direct tenants under the State. He has submitted that for various defaults committed by thika tenant a bharatia loses

his right of occupation he has no protection under the impugned Act. Mr. Pal has submitted that the professed purpose of acquisition of land for planned development and distribution under the impugned Act does not stand scrutiny. Section 6(3) of the impugned Act gives the tenant a right to apply for making pucca structure, but there is no provision compelling him to make a pucca structure providing for better amenities of life. Under the 1949 Act as amended when a thika tenant was using the land for residential purposes for himself and bharatia he could raise a pucca structure with the permission of the Controller. Under the impugned Act, any thika tenant can make construction for any purpose including the business purpose or, for commercial complex, if the precondition is satisfied that the thika tenant must submit a comprehensive development plan or improvement scheme. What is the comprehensive development plan or the improvement scheme ? Who will prepare such comprehensive development plan or the improvement scheme ? To whom such plan or scheme is to be submitted ? Who will consider such plan or development scheme ? The answers to "these questions do not appear from the Act. There is no provision of control or implementation for development of such plan or scheme. Mr. Pal has contended that in the aforesaid circumstances neither of the preconditions to secure distribution of ownership and control for common good is fulfilled. He has also contended that ownership of kutchra or pucca structure even after development remains with the thika tenant and the distribution of ownership and control for common good therefore is not fulfilled. Referring to Section 7(3) of the impugned Act. Mr. Pal has contended that the said section is confined to lands comprised in thika tenancies and the section does not require anything to be done at present. Any public purpose appearing in Section 7(3) makes it quite clear that other than the specific purpose referred to in the object of the Act namely planned development, the land can be utilised for other purposes. Section 7(3) gives power to the State to resume subject to hearing given to the thika tenant. It does not contemplate that the State must resume the land and it is quite possible that even after hearing the thika tenant, the State is not inclined to resume possession. Mr. Pal has contended that any public purpose will not result in achieving the policy of Article 39(b) or 39(c) of the Constitution. In this connection, Mr. Pal has referred to a decision of the Supreme Court made in the case of Kanaiyalal Maneklal Chinai and Another Vs. State of Gujarat and Others, where the land was intended to be utilised for setting up Gandhi Memorial. Referring to Section 27 of the impugned Act, Mr. Pal has submitted that Section 27 deals with disposal of lands vested in the State and disposal of structures resumed by the State. The said provision of disposal by the State is not a compulsory provision of disposal but it is only an enabling provision. Mr. Pal has submitted that the disposal means to make use of or settle on some terms and conditions with any authority or person. He has contended that even if the State Government disposes the land u/s 27, such disposal may not be made to achieve the purpose as contemplated in Article 39(b) and Article 39(c) of the Constitution. Mr. Pal has also contended that the vesting contemplated under the impugned Act means vesting of title and not possession.

Even in respect of lands which have vested in the State, the lands will remain in the possession of thika tenant or the tenant under the State. Such thika tenant and tenant under the State can only be evicted in accordance with the law and Rule 3(n) of the rules provides for eviction of the thika tenant or other tenants. In the aforesaid circumstances, Mr. Pal contends that to obtain possession of the land will therefore depend upon the default of the thika tenant or tenants. Mr. Pal has also contended that when the State Government resumes a land but settlement of resumed land should be made under Rule 10 of the rules which attracts the West Bengal Land Management Manual 1977. Under Rule 10 read with the said Land Management Manual 1977, the State may settle the land with any person or authority on the terms and conditions and in the manner laid down in West Bengal Land Management Manual which do not necessarily subserve the common good. The West Bengal Land anagement Manual does not ensure any planned development. Mr. Pal has therefore submitted that if the provisions of impugned Act are closely scrutinised, it will be quite evident that there is no provision of compulsive acquisition of the lands contemplated to be vested under the impugned Act and the Act also does not provide for dealing with the vested lands for planned development to subserve the common good. He has submitted that mere replacement of one intermediary by another intermediary cannot subserve the common good. Mr. Pal has also contended that regulation of relationship of landlord and tenant as provided for in the impugned Act does not and cannot amount to distribution of "material sources. In the aforesaid circumstances, he submits that the protection of Article 31-C is not attracted to the impugned Act and the Act must be declared ultra vires if it offends Articles 14 and 19 of the Constitution.

29. Coming to the question as to whether or not the impugned Act violates the provisions of Articles 14 and 19 of the Constitution, Mr. Pal has contended that the impugned Act in effect does not provide for any compensation to the landlords and in fact does not provide for any compensation to thika tenants forabolition of their tenancy interest, Mr. Pal has submitted that in order to appreciate the violation of Article 14 by the impugned Act it is necessary to enquire as to (a) whether the land belonging to a person is being acquired? (b) Whether compensation is being awarded for such acquisition? and (c) Whether the amount of compensation awarded is less than compensation payable under any other law providing for acquisition? Mr. Pal has contended that so far acquisition is concerned all owners are similarly circumstanced and no other consideration can come into the picture. He has submitted that law is well settled that the State cannot discriminate between owners in awarding compensation for acquisition of land for a public purpose for which the land is acquired. In support of this contention, Mr. Pal has referred to the decision of the Supreme Court made in the case of Nagpur Improvement Trust v. Vithal Rao reported in AIR 1973 SC 689 and also the decision of the Supreme Court made in the case of Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma, . The Supreme Court has held in the Nagpur Improvement Trust's case that

ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for by an Improvement Trust or Municipal Corporation or the Government? The Supreme Court has held that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts would enable to State to give one owner different treatment from another equally situated, the owner who is discriminated against can claim the protection of Article 14. Mr. Pal has also referred to a decision of this Court made in the case of Ramendra Nath Nandi and Others Vs. State of West Bengal and Others, . The Division Bench of this court has held in the said case to the following effect :

"We fail to see what relation can a specific public purpose or the amount of compensation can have to the said object. The purpose for which a land is acquired is immaterial to the owner of the land. The owner is only interested in the payment of compensation. He is not interested in the purpose for which the land is acquired. If he finds that the land of another person has been acquired and that person gets a higher amount of compensation he will be entitled to make a reasonable grievance about the same. In our opinion, it will be no answer that because the land has been acquired for settlement of immigrants the compensation must not exceed the market value of the land as on December 31, 1946. As has been stated already, we do not see any relation far less any rational relation between the classification made between owners of lands regarding payment of compensation and the object of the Act or the object sought to be achieved by such classification."

Mr. Pal has also referred to another decision of the Supreme Court made in the case of State of Kerala and Others Vs. T.M. Peter and Others, . The Supreme Court has held in the said decision "The State must act equally when it takes property unless there is an intelligent and intelligible differentia between two categories of owners having a nexus with the object, namely, the scale of compensation." Mr. Pal has contended that in the case of acquisition of land, the market value of the land is given under different Acts containing the provisions of acquisition. He has submitted that if the State wants to depart from this uniform market value principle, then the State must disclose the special reason or reasons having nexus with the object, namely, the scale of compensation under Special Act. Mr. Pal has also contended that apart from discrimination in the matter of granting compensation for acquisition of interest of the landlord and thika tenants under the impugned Act, there is also a gross discrimination in the matter of acquisition between owners of land. Under the impugned Act, all

owners of land are not affected but only owners who had let out their lands where the tenants had built kutchha construction and had become thika tenants are only hit. Mr. Pal has contended that there are threefold discriminations, namely, (i) owners who have let out lands and those who have not; (ii) owners who have let out under particular types of letting out i.e. periodic or monthly tenancies for being used or occupied as Khatahs and (iii) owners who have allowed others to occupy land not under any lease. He said that there is no nexus with the object of acquisition. Mr. Pal has also contended that there is lack of legislative competence to enact the impugned Act by the State legislature. He has submitted that even after the deletion of Article 31 by the Constitution (44th) Amendment Act, the law providing for acquisition or requisition of property must provide for compensation and the acquisition or requisition must be for public purpose. The twin requirements of public purpose and compensation have to be read into entry 42 List II of the Seventh Schedule to the Constitution. The impugned Act in fact does not provide for any compensation to thika tenants and other tenants for abolition of their tenancy interest and in effect does not provide for any compensation to the landlords. The impugned Act does not compulsively provide for any public purpose. Entry 42 List II of the Seventh Schedule is the relevant entry under which the impugned Act comes. Mr. Pal has contended that compensation and public purpose must be read into entry 42 List II of the Seventh Schedule to the Constitution. The impugned Act in fact does not provide for any compensation to thika tenants and other tenants for abolition of their tenancy interest and in effect does not provide for any compensation to the landlords. The impugned Act does not compulsively provide for any public purpose.

30. Mr. Pal has contended that compensation and public purpose must be read into entry 42 and if the twin requirements have not been fulfilled the Act must be held unconstitutional for lack of legislative competence. Mr. Pal has contended that the State's sovereign power is classified into three categories, namely, (a) power of taxation, (b) Power of eminent domain, and (c) Police Power. Power of taxation is a burden or charge imposed by the Legislative power upon the persons or property to raise money for public purposes. Police power is defined as the inherent power of the Government to exercise reasonable control over the person and property in the interest of general security health safety etc. (public interest). The power of eminent domain is the power of the sovereign to acquire property for public use upon making just compensation. Referring to the decision of the Supreme Court made in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , Mr. Pal has contended that S. R. Das J. (as His Lordship then was) has observed in the said decision to the following effect that the effect of clause 2 Article 3 is that only certain kinds of deprivation of property, namely, those brought about by acquisition or taking possession of it will not be permissible under any law, unless such law provides for payment of compensation provided however that such deprivation is by authority of law. Mr. Pal has contended that Article 31 provided for two types of deprivation of

property : (a) Deprivation in the exercise of police power (Article 31(1)) and (b) deprivation by acquisition and requisition in the exercise of powers of eminent domain ((Article 31(2)). The general words of Article 300A are however wide enough to cover both kinds of deprivation. Mr. Pal has contended that deprivation of property by police power takes place as punishment for crime or by divesting the particular type of property of its character of property, e.g. liquor infected food. Secondly, the deprivation of property by " acquisition and requisition is made under the power of eminent domain. The acquisition and requisition i.e. eminent domain is now contained in 300A and entry 42 of List II. Mr. Pal has contended that acquisition or requisition does not cover confiscation. Confiscation means taking property without compensation which amounts to penalty for crime in exercise of police power. But in all other cases, there has to be acquisition or requisition of property in exercise of right of eminent domain, i.e. for public purpose and on payment of compensation. Mr. Pal has contended that a law for acquisition of private property for the benefit of private persons without compensation would be confiscation accompanied by a gift of the confiscated property to the recipient. Mr. Pal has contended that legislative power in entry 42 should not be construed as conferring power to acquire or requisition property for private purposes. Such construction of conferring, power of acquisition or requisition for private purpose will permit arbitrary exercise of power by the legislature since necessarily there would be no objective standard for testing private purpose. This would in effect mean that the legislative power under entry 42 could be used to defeat Article 14. In other words, the legislative entry has to be read harmoniously with Article 14 and the scope of the entry would have to be determined accordingly. In this connection, Mr. Pal has referred to a decision of the Supreme Court of United States made in the case of Missouri Pacific Railway Company v. State of Nebraska reported in (1896) 41 Law Ed 489 Mr. Pal has referred to a passage of the Supreme Court decision to the following effect :

--

"This Court, confining itself to what is necessary for the decision of the case before it is unanimously of opinion that the order in question, so far as it required the railroad corporation, to surrender a part of its land to the petitioners, for the purpose of building and maintaining their elevator upon it, was, in essence and effect a taking of private property of the railroad corporation, for the private use of the petitioners. The taking by a State of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the 14th Act of Amendment of this Constitution of the United States."

Mr. Pal has also referred to another decision of the Supreme Court of U.S.A. made in the case of Chicago, Burlington & Quincy Railroad Company v. City of Chicago reported in (1896) 41 Law Ed 979. In the said decision the Supreme Court has quoted with approval the observation of Mr. Cooley in his work on Constitutional limitations. The Supreme Court has quoted the observation of Mr. Cooley to the following effect : --

"In his work on constitutional limitations Mr. Cooley says: The principles, then upon which the process is based are to determine whether it is "due process" or not, and not any considerations of mere form..... When the Government through its established agencies, interferes with the title to one's property, or with his independent enjoyment of it, and its action is called in question as not in accordance with the law of the land, we are to test its validity by those principles of civil liberty and constitutional protection which have become established in our system of laws, and not generally by rules that pertain to forms of procedure merely. In judicial proceedings the law of the land requires a hearing before condemnation, and judgment before dispossession; but when property is appropriated by the Government to public uses, or the legislature interferes to give direction to its title through remedial statutes, different considerations from those which regard the controversies between man and man must prevail, different proceedings are required, and we have only to see whether the interference can be justified by the established rules applicable to the special case....." due process of law requires, first, the legislative act authorising the appropriation, pointing out how it may be made and how the compensation shall be assessed, and secondly, that the parties or officers proceeding to make the appropriation shall keep within the authority conferred, and observed every regulation which the Act makes for the protection or in the interest of the property owner, except as he may see fit voluntarily to waive them."

Mr. Pal has further submitted that British Constitutional Law also recognises the general rule that the Crown may take private property only upon payment of compensation. He has referred to a decision of the House of Lords in the case of *Burmah Oil Company v. Lord Advocate* reported in (1964) 2 All ER 348. At page 359 of the report, the House of Lord has quoted with approval the following passage from Grotius :

"I have said elsewhere that the property of subjects belongs to the State under the right of eminent domain; in consequence the state, or he who represents the state, can use the property of subjects and even destroy it or eliminate is, not only in case of direct need (*ex summa necessitate*) which grants even to private citizens measure of right over others" property, but also for the sake of public advantage.... But we must add, when this happens, the state is bound to make good at public expense the damage to those who lose their property."

Mr. Pal has also submitted that so far as the Constitution of India is concerned, it is well settled that the following, *inter alia*, form part of the basic structure of the Constitution :

(a) The objectives specified in the preamble to the Constitution, (*vide His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*,).

(b) The principle of equality enshrined in Article 14 of the Constitution (*vide Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, and *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*,).

(c) Secularism (vide His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala,).

The preamble to the Constitution specifically mentions economic justice. Mr. Pal has contended that a law which deprives a person of property without compensation cannot be considered to secure economic justice and would be against one of the objectives specified in the preamble and hence destructive of the basic structure of the Constitution. Similarly, the legislative power in entry 42 cannot be construed in a manner to give liberty to the legislature to take property of a private person and give the same to another private person as that would mean conferring arbitrary power on legislature violating Article 14 of the Constitution. If such a power is accepted as constitutionally valid, then many of the rights conferred by Article 19 could be rendered nugatory, e.g., right to reside and settle in any part of India (Article 19(e)) or right to carry on profession, occupation trade or business (Article 19(g)). Furthermore, if compensation is not a requirement of acquisition then the fundamental right conferred by Article 26 regarding freedom of religion which is based on secularism could be nullified by ordinary legislation under entry 42. Therefore, unless the twin requirements of public purpose and compensation are read into entry 42 of List II, the legislature would have the power to enact laws which are destructive of the basic structure of the Constitution. Mr. Pal has contended that no law has been made after 44th Amendment which is not for public purpose and does not provide for compensation. In this connection, he has referred to a decision of the Bombay High Court reported in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, . Mr. Pal has also referred to a decision of this court reported in *Gyan Singh Vs. State of West Bengal and Others*, and has contended that the observation made in the said decision of this court is obiter and also does not correctly interpret the constitutional validity of a law of acquisition without provision for compensation.

31. Mr. Pal has also contended that the impugned Act does not contain any public purpose. Mr. Pal has further contended that the Act or instrument of acquisition must contain compulsive provisions for user for public purpose. He has contended that the acquisition for public purpose must be an acquisition for such purpose at immediate present and not a mere enabling provision to use it for public purpose at any future date. He has submitted that Section 7(3) of the impugned Act is only an enabling provision and does not contain any compulsive provision for utilising vested land for public purpose. Mr. Pal has contended that if it is assumed there is also acquisition of other lands such acquisition of other lands is also not for public purpose because the possession remains with occupier of other land and no provision for i any compulsory resumption of possession of such lands has been made. The State can only get possession if there is default on the part of the occupier. Mr. Pal has contended that the Urban Land Ceiling and Regulation Act provides for compensation for vacant land and vacant land is defined in Section 2(q) of the Urban Land Ceiling and Regulation Act. Vacant land under the said Act is not land used for agriculture or not land on which

construction of a building is not permissible under the Building Regulations in force and not land occupied by any building which had been constructed before the appointed date and the land appurtenant to such building. Hence, the compensation payable under the Land Ceiling and Regulation Act is not attracted to the land comprising thika tenancy and other lands owned and possessed by tenants. Moreover, the period of five years relating to the date of publication of notification under Sub-section (1) of Section 10 under the Urban Land Ceiling Act cannot be made applicable to the lands contemplated for vesting under the impugned Act. Mr. Pal has also contended that the basis of compensation under the Urban Land Ceiling Act also cannot apply to the lands contemplated under the impugned Act. Mr. Pal has therefore contended that the twin requirements of an Acquisition Act under Entry 42 namely the acquisition is for public purpose and provisions for compensation are absent. It must, therefore, be held that the said Act is ultra vires the Constitution. Mr. Pal has also contended that the impugned Act is unworkable having regard to the scheme of the Act. He has contended that an unworkable legislation is no legislation within the meaning of Article 245 and therefore such an unworkable legislation is ultra vires. The impugned Act does not provide for any machinery for determining or marking out the kutchra structure. If any dispute arises as to whether a structure is pucca or kutchra, there is no authority to decide. Section 2(c), West Bengal Land Holding Revenue Act 1979 has been declared ultra vires by the Division Bench of this Court. The aforesaid judgment declaring Section 2(c) as ultra vires has an important bearing on Section 6(2) of the impugned Act. u/s 6(2), every thika tenant and other tenants occupying land directly under the State under Sub-section (1) of Section 6 is liable to pay to the State an amount of revenue determined in accordance with the provisions of the West Bengal Land Holding Revenue Act, 1979 and for this purpose such tenant shall be deemed to be a raiyat under the Act. The proviso to Sub-section (2) of Section 6 of the impugned Act lays down that the revenue payable by the tenant shall not be less than what he was paying to the landlord before the impugned Act coming into force. Mr. Pal has contended that the proviso would be applicable if the result of the main enacting part imposes lesser burden than the rent which the thika tenant was paying to the landlord before the impugned Act. The proviso cannot replace the main enacting part. In view of declaration that Section 2(c) of the said Land Holding Revenue Act is ultra vires, the rent payable by the thika tenant cannot be determined. The result will be that the thika tenant or tenant becomes entitled to hold a property without paying any rent to the State. Mr. Pal has also contended that the thika tenant can construct a pucca structure only after submitting a comprehensive development or improvement scheme but such comprehensive development plan or improvement scheme has not been defined and the Government can resume land for planned development or implementation of an improvement scheme. There is therefore uncertainty about the power of construction of pucca structure and/or resumption of land by the Government. Mr. Pal has contended that the provisions of an Act cannot be vague and cannot suffer from uncertainty. Referring to the decision of the Supreme

Court made in the case of *The State of Madhya Pradesh and Another Vs. Baldeo Prasad*, Mr. Pal has contended that the word "goonda" was not defined in the said Act and for such uncertainty and vagueness in the definition of the word "goonda" Section 4-A, the Supreme Court has held the provisions of Sections 4 and 4A, Goonda Act, as ultra vires. Mr. Pal has also referred to another Supreme Court decision in this connection, viz., the decision made in the case of *K.A. Abbas Vs. The Union of India (UOI) and Another*. The Supreme Court has held in para 48 to the effect that the real rule is that if a law is vague or appears to be so, the Court must try to construe it as far as may be and language permitting the construction sought to be placed on it must be in accordance with the intention of the legislature. Thus, if the law is open to diverse constructions, that construction which accords best with the intention of the legislature and advances the purpose of legislation is to be preferred. Where however the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution as was done in the Goonda Act. The Supreme Court has also held that if possible, the court instead of striking down the law may itself draw the line of demarcation where possible but this effort should be sparingly made and only in the clearest of cases. Mr. Pal has submitted that the impugned Act is vague and it is not possible to give any construction which accords best with the intention of the legislature and advances the purpose of legislation. Mr. Pal has also contended that the impugned Act is ultra vires Article 21 of the Constitution. Mr. Pal has contended that deprivation of livelihood is violative of Article 21. Mr. Pal has contended that legislative power cannot be exercised to defeat Article 21, i.e., by unjust or unfair legislation. Absence of public purpose and compensation is unfair or unjust and such law would not be a valid law within Article 300A. Mr. Pal has also contended that Section 8(2) of the impugned Act is violative of Article 26 of the Constitution. The provisions of Section 8(2) read with ` 5(1) results in annuity being paid for a limited period. Moreover, Section 8(2) of the impugned Act confers unguided power of Controller in fixing the quantum of the annuity. There is no lower limit fixed by statute and the Controller has a power to fix any amount as annuity so long as it does not exceed the net annual income. Mr. Pal has also contended that the Act also suffers from non-application of mind by the Legislature and also abdication of the legislative power to the executive by way of excessive delegation. Mr. Pal has contended that there is ample evidence of non-application of mind by the State Legislature in enacting the impugned Act, although in the preamble of the Act, monthly or periodical tenancies have been mentioned but the Act does not contain any provision for periodical or monthly tenants. u/s 3(3), "holding" is defined only in relation to thika tenants and in Section 3(4), the landlord has been defined only vis-a-vis thika tenant. Other lands appearing in Section 5 is totally redundant in view of comprehensive definition of thika tenant in Section 3(8). West Bengal Revenue Holding Act, 1979 cannot be fitted into the situation effectively and Section 26 becomes inapplicable. There is no provision relating to bharatia's status when the thika tenancy stands terminated and the structure

vests in the State free, from all encumbrances. There is no provision for the bharatia's elevation as a tenant or occupant under the State. The provisions of compensation under the Urban Land Ceiling Act as referred to in Section 8 of the impugned Act cannot be fitted with the provisions of the impugned Act. There is no provision for compensation to the landlord's statutory interest in the structure and the compensation is uniform for all lands irrespective of locality, thereby making compensation as illusory in many cases. Mr. Pal has therefore contended that the Act must be held ultra vires on the ground that it violates Articles 14, 19, 21 and 26 of the Constitution and does not get protection of Articles 39(a) and 39(b) of the Constitution. The Act is also unworkable and the Act is a piece of legislation depicting clear non-application of mind and various provisions suffer from uncertainty and vagueness which cannot be reconciled. As a result, the Act as a whole must be declared ultra vires.

32. Mr. Bhaskar Gupta, the learned counsel appearing for the petitioners in a number of cases viz. C.R. No. 8743(W) of 1983, C.R. No.7174(W) of 1982, Cr. No. 4872(W) of 1983, C.R. No. 4489(W) of 1983 and C.R. No. 10761(W) of 1984 has also adopted the arguments advanced by Mr. Pal and has further added that Section 5 of the impugned Act does not include vacant land and no vacant land can vest under the provisions of that section for the following reasons : --

i) A plain reading of the section in its proper grammatical sense will show that vacant lands are not intended to be covered.

ii) The second half of the main part of the section provides for vesting of easement, customary rights, common facilities and such other things in Thika Tenancies and khatahs, attached to or used in connection with such Thika tenancies and khatahs.

iii) It is thus clear that the section does not provide for vesting of easements, customary rights, common facilities and such other things in any vacant land. Thus if a vacant land is also alleged to be covered by Section 5, there would be no vesting of easements, customary rights, common facilities and such other things in the said vacant land. Such provision will be contrary to the section itself which provides for vesting in the State free from all encumbrances. Therefore, on a reasonable construction of the section it cannot be said that the said section includes vacant land.

Mr. Gupta has further contended that Section 5 of the impugned Act contemplates vesting of not merely the right, title and interest of landlord in lands comprised in thika tenancies but also the lands themselves free from all encumbrances. This is clear from a plain reading of section itself. The vesting of lands comprised in thika tenancies is therefore complete by the operation of Section 5. He has supported Mr. Pal in the contention that the structure comprising thika tenancy must mean a kutcha structure and not a pucca structure. Mr. Gupta has contended that pucca structure has been defined in Section 3(7) of the impugned Act and this expression of pucca structure has

been used only in Section 6(3) of the impugned Act. Section 6(3) contemplates a situation after the vesting has taken effect u/s 5. Section 6(3) gives right to a thika tenant after such vesting to construct a "pucca structure" after obtaining prior approval in writing from the prescribed authority and after submitting a comprehensive development plan or improvement scheme. There is nothing in the impugned Act which suggests that a tenant who has constructed a pucca structure on the land will also be a thika tenant within the meaning of the impugned Act. Referring to Section 27 of the impugned Act, Mr. Gupta has contended that the said Section 27 begins with a non obstante clause, namely, "notwithstanding, anything contained elsewhere in this Act or in any other law for the time being in force". Therefore, the power u/s 27 of the Act can be exercised by the State Government notwithstanding the provisions of Sections 6 and 7. The effect of the word "notwithstanding" has been indicated in various decisions of the Judicial Committee and the Supreme Court and Mr. Gupta has referred to the decision of the Judicial Committee and Supreme Court reported in AIR 1945 98 (Privy Council) , The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, and Shree Sajjan Mills Ltd. Vs. Commissioner of Income Tax, M.P., Bhopal and Another, , Mr. Gupta has contended that it is not understood what the legislature meant by saying in Section 27 that the power conferred upon the State by that section would be "subject to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976". Mr. Gupta has submitted that Section 27 confers upon the State only an enabling power to settle upon any person or authority the land or structure vested in or resumed by the State under the Act so as to subserve the common good on such terms and conditions and in such manner as may be prescribed. Rule 10 of the Rules provides, that any land or structure vested in or resumed by the State under the Act may be made use of or settled with any person or authority for subserving the common good on terms and conditions and in the manner laid down in the West Bengal Land Management Manual, 1977. Mr. Gupta has submitted that it would be noticed that the obligation to subserve the common good arises u/s 27 only in the matter of leasing or settling the land but not in the matter of picking up a particular land for the purpose of such settling. Since u/s 5 of the Act, vesting of lands comprised in thika tenancies takes effect with the coming into operation of the Act u/s 27, the State Government is free to choose any such vested land and settle the same in favour of any person or authority. The obligation to subserve the common good arises only in the matter of settling the land. Settling of such land u/s 27 must be read with Rule 10 which in turn provides that settlement would be made in accordance with the West Bengal Land Management Manual, 1977. This Manual only contains the terms and conditions for long-term leases and short-term leases and gives no indication as to how common good is to be subserved. Section 27 does not make any provision for settling the lands comprised in khatahs and if such land also vests in the State Government free from encumbrances by operation of Section 5, Section 27 does not have any application on such land. It is thus open to the State Government not to dispose of or distribute land comprised in khatahs and

Section 27 being only an enabling section confers power upon the State Government to pick and choose any land comprised in thika tenancies out of all the lands which vest by operation of Section 5, for the purpose of settling u/s 27, regardless of the provisions of Sections 6 and 7. Section 27 therefore envisages the conferment of arbitrary and uncanalised power upon the State Government without any guidelines to settle some lands being picked and chosen by the State Government. Section 27 is also an excessive delegation and therefore offends Article 245 of the Constitution. In support of his contention, Mr. Gupta has relied on a decision of the Supreme Court reported in *The State of Punjab and Another Vs. Khan Chand*, . In this connection, Mr. Gupta has contended that Section 23, Urban Land (Ceiling and Regulation) Act, 1976 was not declared ultra vires by the majority judgment in view of the fact that the expression "shall" in Sub-section (4) of Section 23 made it compulsory for the State Government to distribute all excess vacant lands to subserve the common good and this saved the section from constitutional invalidity. Mr. Justice Tulzapurkar and Mr. Justice A.P. Sen however declared Section 23 as ultra vires by their minority judgment. In the instant case, unlike Section 23, Urban Land (Ceiling and Regulation) Act, 1976, Section 27 of the impugned Act confers only an enabling power upon the State Government and there is no compulsion upon the State Government to distribute all lands vested in it by operation of Section 5. Mr. Gupta has contended that Section 27 of the impugned Act is inextricably linked up with the rest of the statute and the legislature would not have enacted the remaining provisions without enacting Section 27. Section 27 is thus an inseparable part of the impugned Act. Mr. Gupta has submitted that the doctrine of severability has been explained in the decision of the Supreme Court made in the case of *Harakchand Ratanchand Bantia and Others Vs. Union of India (UOI) and Others*, . He has referred to in particular para 24 at P. 1467 of the said report which runs as follows : --

"The only other point that remains to be decided is whether as a result of some of the sections of the impugned Act being struck down, what is left of the impugned Act should survive or whether the whole of the impugned Act should be declared invalid. We are of opinion that the provisions which are declared invalid cannot affect the validity of the Act as a whole. In case of this description the real test is whether what remains of the statute is so inextricably bound up with the invalid part that what remains cannot independently survive or as it is sometimes put whether on a fair review of the whole matter it can be "assumed that the legislature would have enacted at all that which survives without enacting the part that is "ultra vires"."

Mr. Gupta has contended that Section 27 cannot be regarded as a severable part of the Act because the whole object of the Act is to distribute lands so as to subserve the purpose underlying Clauses (b) and (c) of Article 39 of the Constitution is to be achieved through Section 27 and if Section 27 becomes invalid the whole object of making provisions for vesting or resumption of land under the impugned Act would be rendered nugatory. Mr. Gupta has also

contended that Article 19(1)(g) of the Constitution has been infringed by the impugned Act since the Act purports to take away the property which is an integral part of the right to carry on trade, business, occupation and/or profession guaranteed by Article 19(1)(g). Mr. Gupta has contended that law is well settled by the Supreme Court that in determining the Constitutional validity of a legislation vis-a-vis fundamental rights, the test of pith and substance of the impugned legislation vis-a-vis fundamental rights, immaterial and what has to be seen is whether the direct and inevitable effect of the impugned legislation results in abridgment of any of the fundamental rights. The Supreme Court has also held that an Act has to meet the challenge of each and every fundamental right separately. In support of this contention, Mr. Gupta has referred to a decision of the Supreme Court reported in *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, . He has also referred to a decision of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, for the contention that in order to be constitutionally valid, the law must meet the challenge of each of the fundamental rights provided in Part III of the Constitution. Mr. Gupta has contended that if Section 27 is struck down, there is no provision in the Act which provides for compulsory distribution of lands vested u/s 5 and the essential requirement under Article 39(b) and (c) of the Constitution that the ownership and control of the material resources of the community must be distributed as best to subserve the common good cannot be achieved in the impugned Act. Hence, the Act cannot get any protection under Article 31C of the Constitution.

33. Mr. Abdul Latif, the learned counsel appearing for the added petitioners in Civil Rule No. 10387(W) of 1982 (*Bholanath Ojha v. The State of West Bengal*) viz. The People's Union for Civil Liberties, West Bengal, has contended that the impugned Act is not beneficial to the thika tenants in so far as it purports to make the right of a thika tenant non-transferable u/s 6(3) and in so far as it purports to take away all right, title and interest of the thika tenant in the land comprised in the holding and in so far as it unjustly and unreasonably imposes a liability on a thika tenant to provide within an inordinately long period of 12 years, equivalent space to an erstwhile bharatia on the old terms and conditions u/s 11(2), in so far as it unreasonably enhances the rate of revenue leviable on a thika tenant in respect of his holding (vide Section 26). Adopting the argument advanced by Mr. Pal, Mr. Latif has submitted that in making the right of a thika tenant non-transferable u/s 6(3) of the Act, the legislature has failed to consider grave exigencies in the family of a thika tenant, such as, serious illness under which parting of the property particularly homestead land becomes a compelling necessity. Mr. Latif has also submitted that the impugned Act discriminates against a thika tenant using his holding for residential purposes, inasmuch as there is no such bar imposed under the West Bengal Acquisition and Settlement of Homestead Land Act, 1969 and the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisan and Fishermen Act, 1975. He has submitted that in fact, u/s 10(2) of the latter Act, a limited power of transfer has

been specifically given to an occupier of homestead land allotted to him by the State. Mr. Latif has further submitted that Section 7(1) of the impugned Act in so far as it purports to take away the right, title and interest of a thika tenant in the land comprised in his holding is inconsistent with the proviso to Section 5 of the impugned Act which protects a thika tenant's rights, easement, common facilities or benefits in khas lands of the landlord. Mr. Latif has contended that the Thika Tenancy (Acquisition and Regulation) Rules 1982 has been framed in exercise of the power conferred by Section 20 of the 1981 Act but Clauses (f), (i), (j), (k), (1), (m) and (n) of Rule 3 of the said Rules are unjust unreasonable and/or unconstitutional inasmuch as a thika tenant has been made liable to pay all cases (cesses?), rates or other impositions in respect of the lands in which he has no right, title or interest vide Section 7(1). The said sub-rules confer uncanalised powers, without laying down guidelines for their exercise and constitute an invasion of privacy, which is an essential element of a man's personal liberty. In support of his contention, the decisions of the Supreme Court in the case of Kharak Singh Vs. The State of U.P. and Others, and Gobind Vs. State of Madhya Pradesh and Another, have been referred to. Mr. Latif has contended that Sub-rule 1(3) interferes with religious worship and as such violates Article 25(1) of the Constitution and Rule (k) purports to impose unreasonable and purposeless use and restriction on the use of the property.

34. The learned counsel appearing for the Official Receiver, High Court, Calcutta in C.R. No. 921(W) of 1983 has contended that several immovable properties were dedicated to several deities by donors with direction for carrying on daily seva puja and periodical pujas and other religious performances mentioned in the deeds of endowment. In course of time due to differences amongst the shebaites and for various other reasons litigations were started and this court in some of the cases had appointed the Official Receiver to take charge of the estates left by the donors. The Official Receiver has been carrying on the seva puja in terms of the deeds of endowment. The immovable properties dedicated to the deities are mostly governed by the provisions of the Calcutta Thika Tenancy Act, 1949. Referring to Section 8 of the impugned Act, the learned counsel for the Official Receiver has contended that where the landlord is Corporation or Institution established exclusively for a religious or charitable purpose or is a person holding under a Public Trust or endowment or any other legal obligation exclusively for a religious or charitable purpose the State shall pay to such landlord an annuity for such number of years as may be prescribed but such annuity shall not exceed the annual net income and in determining the net annual income, the Controller shall deduct from the gross income apart from other sums as may be prescribed, charges on account of management and collection at the rate of 20% of the gross income. It has been contended that such provision of deduction of 20% as collection charges vide Section 8(2) is wholly arbitrary and without any rational basis and even under the Income Tax Act such charges are much below the above percentage. The impugned Act does not make any provision for payment of annuity to private religious trusts or

debuttar while making provisions for payment of such annuity to public religious trusts and endowments, thereby making a classification between two categories which is wholly unconstitutional and perverse. Under Sub-clause (3) of Section 8 the Controller has been given power to enquire and decide any question as to whether any trust, endowment, corporation or institution is for exclusively religious or charitable purpose or whether it is of public or private nature and any question of title incidental thereto as may be necessary is to be determined by the Controller. Such enormous power without any guideline is wholly arbitrary and is likely to cause miscarriage of justice and therefore liable to be struck down. The Controller cannot usurp the function of a court and decide the title by interpreting the endowment and/or a deed of dedication. In the event a trust is found to be a private one, in the absence of any, provisions for annuity, the seva puja of the deities in question will completely cease and such provision offends the constitutional guarantee to carry on religious worship according to one's own belief. Mr. Ataunabi the learned counsel appearing for Mutwali in one of the writ cases has also contended that the wakf estate cannot vest without making sufficient provisions for maintaining the religious purposes for which the wakf was created. It has been contended on behalf of the Mutwali that wakf estate was protected under Article 26 of the Constitution inasmuch as the Muslim community is a religious denomination and a religious minority having constitutional protection.

35. Mr. R. N. Das, the learned counsel appearing for the petitioners in some of the Civil Rules viz. C.R. No. 1221(W) of 1982, C.R. No. 2973(W) of 1982 and C.R.No. 3041(W) of 1982 has contended that the declaration given in Section 2 of the impugned Act that the Act provides for giving effect to the directive principles as contained in clauses (b) and (c) of Article 39 of the Constitution is only illusory and motivated for the sole purpose of protecting the Act by taking shelter under Article 31C of the Constitution. Mr. Das has contended that Sections 1 to 27 of the impugned Act do not indicate what is the policy for which the impugned Act has been legislated. On the contrary, Sub-section (3) of Section 7 and Section 27 make it abundantly clear that at the time of passing the said enactment there was no policy for utilising the land for any public purpose. When the Government is armed with existing laws for acquiring land for any public purpose there was no necessity of depriving the owners of the thika tenancy land by the purported legislation. Mr. Das has contended that the directive principle contained in Article 38(2) of the Constitution has been totally ignored in the 1981 Act. The owners of land in Calcutta and Howrah comprising thika tenancy have been affected by the impugned Act and the impugned Act has created further inequalities in status of some land holders in Calcutta because the status of other land owners in Calcutta and Howrah remains unaffected.

36. Mr. Swadesh Bhusan Bhunia, the learned counsel appearing in Civil Rule No. 11937(W) of 1982 and C.R. No. 3926(W) of 1983 has contended that the impugned Act came into force on 18th January, 1982. u/s 3(8) of the impugned Act, the thika tenancy must subsist on 18th January, 1982 but where a decree

has already been passed terminating the thika tenancy it cannot be contended that the thika tenancy had been continuing when the impugned Act was enforced. The Thika Tenancy (Stay of Proceedings) (Temporary Provision) Act, 1978 and the Thika Tenancy Stay of Proceedings Act, 1981 may stay the proceedings for execution of the decree, but the said Acts do not revive the jural relationship of landlord and tenant. The legislative competence to regulate the relationship between landlord and tenant under Entry 18 of List II provides for regulation of relationship between landlord and tenant in case of existing or subsisting relationship and not for regulating non-existing relationship of landlord and tenant.

Section 4 and Section 19 of the impugned Act must be struck down being a colourable piece of legislation and also being severable from the other provisions of the impugned Act even if other provisions are held *intra vires*. By obtaining a decree for eviction against an erstwhile thika tenant, the landlord got a vested right in the land for obtaining possession. The decree had been passed on the ground of reasonable requirement of landlord. Any attempt to deprive the landlord of such reasonable requirement since found by the Court in passing the decree cannot but make the law unreasonable. Due process of law envisages that law must be valid procedurally as well as substantively. Section 19 of the impugned Act purports to affect the right of the landlord who had obtained the decree before the enforcement of the impugned Act against the erstwhile thika tenant by a deeming provision. Section 19 is wholly unreasonable and is a colourable piece of legislation and also a fraud on the power of the legislature. In support of this contention, Mr. Bhunia has referred to the decision of the Supreme Court reported in *Harbans Lal Vs. Jagmohan Saran, and H.D. Vora Vs. State of Maharashtra and Others*, . Mr. Bhunia has contended that the legislature cannot invalid a decree or make it inoperative, but can only remove the basis of the decree by changing the law but without changing the law the decree for eviction has been sought to be made ineffective retrospectively. Such provision is nothing but an inroad of legislature on the judicial power and therefore must be held *ultra vires*. In support of this contention, Mr. Bhunia has referred to decisions of the Supreme Court reported in *The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd., and D. Cawasji and Co., Mysore Vs. State of Mysore and Another*, . Mr. Bhunia has also adopted the arguments of Mr. Pal on other points. Mr. Bhunia has contended that "procedure established by law" is one and a single concept and it cannot be divided into two viz. (1) Procedure and (2) Law. Mr. Bhunia has contended that payment of compensation is a part of the procedure for acquisition of property. He has submitted that compensation according to modern concept does not flow from natural right to property but from the principle of equality namely one man cannot be made to bear the burden of common good. Rights enumerated in Fundamental Rights are not the source of our right. These are basic human rights envisaged in the Preamble. Part III of the Constitution weaves a pattern of guarantees on the texture of basic human right. It does not attempt to enumerate distinct rights.

For this contention, Mr. Bhunia has referred to a decision of the Supreme Court reported in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, .

37. The learned Additional Advocate General appearing for the State of West Bengal has submitted that u/s 5, four categories of lands vest under the 1981 Act, viz. (i) lands comprised in thika tenancy, (H) lands held under any person in perpetuity, (iii) lands held under registered lease for a period of not less than 12 years and (iv) lands held in monthly and periodical tenancy for being used or occupied as khatahs. So far as the meaning of lands comprised in thika tenancy is concerned, it has been submitted by the learned Additional Advocate General that it will mean (a) lands on which the lessee has constructed a pucca or kutcha structure, (b) a thika tenant who has constructed a pucca structure does not cease to be a thika tenant and thika tenancy also includes a pucca structure. The learned Additional Advocate General has contended that the decisions reported in *Kshiboda Moyre Sen and Others Vs. Ashutosh Roy and Others*, and *Monmatha Nath Mukherjee Vs. Sm. Banarasi and Others*, have not laid down any principle which restricts thika tenancy to kutcha structure only. The learned Additional Advocate General has submitted that the observation of this court made in the case of 66 CWN 338 regarding interpretation , of Section 25 of the 1949 Act is an obiter dictum and should not be accepted as a decision laying down the principle of law. The learned Additional Advocate General has also submitted that the expression "other lands" appearing in Section 5 means all types of vacant lands and it will not be correct reading of Section 5 that other lands refer to khatahs because "held" has been used after first "or" in Section 5. The learned Additional Advocate General has contended that any interpretation restricting other lands as khatal lands will be against the literal meaning of the language. He has also contended that there is no punctuation after each category in Section 5 and proviso to Section 5 supports the contention that other lands include three categories of lands viz. lands ; comprised in thika tenancy, lands held under any person in perpetuity, lands held under registered lease for a period of not less than 12 years. The learned Additional Advocate eneral has contended that the rights of the thika tenants have been abolished and no tenancy has been created u/s 6. The expressions "tenant" and "thika tenant" have been used in the Act for convenience of drafting. He has, therefore, submitted that u/s 5 vesting takes place not only in respect of khatal lands but also in respect of other lands as mentioned hereinabove. With reference to the contention of Mr. Pal that the impugned Act is ultra vires the" Constitution, the learned Additional Advocate General has submitted that if the law gives effect to Articles 39(b) and 39(c) in stages then requirement of Article 31C is fulfilled. The learned Additional Advocate General has contended that it is not necessary that in order to get protection under Article 31C the law should provide for immediate implementation of the policy referred to in Articles 39(b) and 39(c). The learned Additional Advocate General has also contended that Rule 3(n) does not contemplate ouster of bharatia. The learned Additional Advocate General has contended that if a party alleges that there has been breach of fundamental

rights, the onus lies on that party to substantiate the allegation. In support of this contention, he has referred to two decisions of this Court reported in *Must. Hasnear Khatun Vs. Revenue Officer, Midnapore and Others*, and *Banku Behari Dutt Vs. State of West Bengal*, . The learned Additional Advocate General has contended that no fact has been pleaded to: discharge the basic onus of the petitioners that there has been breach of fundamental right. He has contended that submissions have been sought to be made on hypothetical basis without any factual support. The learned Additional Advocate General has also contended that there might be occasions of some hardship in a piece of legislation but instances of isolated hardship are irrelevant, and in support of this contention he has referred to a decision of the Supreme Court reported in *B. Banerjee Vs. Smt. Anita Pan*, . Referring to the contention of Mr. Pal that the Act violates Article 14 of the Constitution, the learned Additional Advocate General has contended; that the concerned lands could not have been acquired under the Land Acquisition Act or any other Act other than the impugned Act. Hence, there is no occasion for discrimination and Article 14 has therefore no manner of application. In this connection, the learned Additional Advocate General has referred to a decision of the Supreme Court reported in *Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma*, and *Prakash Amichand Shah Vs. State of Gujarat and Others*, and also a decision of this Court reported in *State of West Bengal Vs. Asitendra Nath Mitter*, . He has also contended that there is no discrimination between owners of different types of land. The learned Additional Advocate General has contended that the impugned Act contemplates abolition of tenancy right in respect of certain categories of land for which there is no special legislation and as such it cannot be contended that the provisions of the impugned Act are more onerous than similar provisions in other Acts, Commenting on the contention of Mr. Pal on the legislative competence to enact the impugned Act, the learned Additional Advocate General has contended that after the 44th amendment of the Constitution, the question of providing any compensation or the acquisition for public purpose only does not arise. He has submitted that the impugned Act provides for acquisition for public purpose and also payment of compensation. The learned Additional Advocate General has contended that since the impugned Act gives effect to Articles. 39(b) and 39(c) it must be held that public purpose is satisfied. He has also contended that the theory of the "Eminent Domain" is not applicable in India and in support of this contention he has referred to a decision of the Supreme Court reported in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, . He has contended that a property can be acquired even for the private purpose. The learned Additional Advocate General has referred to the comments of Sri D. Basu in his book "Shorter Constitution of India", Ninth Edition, page 668 for the purpose of showing that after the 44th Amendment of the Constitution, the requirement of payment of compensation is no longer in force. He has also referred to an observation of the Division Bench of this court made in the case of *Gyan Singh Vs. State of West Bengal and Others*, . The learned Additional Advocate General has contended that the earning capacity of the thika tenant

has been left untouched and there is nothing unjust in not giving compensation for the abolition of his interest in the land. It has been further submitted by him that by resorting to comprehensive development scheme, a thika tenant can increase his earning and the law does not stand in the way of augmenting income through comprehensive development scheme. The learned Additional Advocate General has further contended that Section 8(1) of the impugned Act provides for compensation to be paid to the landlords and it cannot be contended that the Act does not provide for any compensation for the acquisition of the interest of the landlords. The learned Additional Advocate General has however conceded that comprehensive development plan is not defined in the impugned Act or the rules framed thereunder and no guideline regarding comprehensive development plan has been provided for. He has however submitted that comprehensive development plan cannot be restricted by any precise definition and precisely for the said reasons, such guideline has not been given. He has further contended that land development is a well known concept and has many facets which cannot be indicated by any description. In this connection, reliance has been made to a decision of the Bombay High Court reported in *Sadrudin Suleman Jhaveri Vs. J.H. Patwardhan and Others*, . Commenting on the contention of Mr. Pal that the occupation of the thika tenant under the impugned Act is of a precarious nature, the learned Additional Advocate General has submitted that the State is not intended to make any profit at the expense of thika tenant. Therefore, thika tenant does not need any protection. Referring to the West Bengal Land Management Manual, 1977, the learned Additional Advocate General has contended that the Manual prescribes terms of settlement but he has contended that the lands vesting under the impugned Act cannot be settled in a way which does not subserve the common good. In this connection, reference has been made to a decision of the Supreme Court reported in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, . Referring to Article 21 of the Constitution, the learned Additional Advocate General has contended that the compensation provided for in the impugned Act is such that the landlord will get sufficient annual income by investing such compensation. The learned Additional Advocate General has contended that the landlords cannot be said to be carrying on any trade, occupation or business within the meaning of Article 19(1)(g) of the Constitution. It has been contended by him that the landlord's income from rent is unearned income and therefore it is not trade or occupation or business. For this contention, reference has been made to the decision of the Supreme Court reported in *Narain Swadeshi Weaving Mills Vs. The Commissioner of Excess Profits Tax, and Bai Chanchal and Others Vs. Syed Jalaluddin and Others*, . The learned Additional Advocate General has therefore contended that even assuming that Article 19(1)(g) applies, the impugned Act contains reasonable restrictions and as such not ultra vires Article 19(1)(g). Commenting on the contention of Mr. Pal that the Act is illegal for non-application of mind or application of the legislative power, the learned Additional Advocate General has contended that for non-application of mind by legislature an Act does not become ultra vires and for some vagueness or uncertainty the

Act does not become illegal and liable to be struck down. He has contended that an Act can only be struck down if there is no legislative competence or it violates constitutional provisions. For vagueness, an Act cannot be struck down and in support of this, the learned Additional Advocate General has referred to the decision of the Supreme Court reported in *Municipal Committee, Amritsar and Others Vs. State of Punjab and Others*, .

38. Mr. Arun Prakash Chatterjee, the learned Standing Counsel, has also made further submissions for the State Respondents and has supported the contention made by the learned Additional Advocate General. He has contended that Article 21 has no application in the impugned Act. He has contended that the preamble of the Constitution does not form part of the basic structure of the Constitution and in support of this contention he has made reference to the observations of the Supreme Court in *Keshabananda Bharati's* case. The learned Standing Counsel has also contended that legislative competence has not been questioned by the petitioners and therefore such argument should not be accepted. Referring to Section 27 of the impugned Act, the learned Standing Counsel has contended that thika tenancies comprise mostly under developed areas and/or bustees and public health will be improved through State Authority. He has also contended that thika tenancies have been abolished and the expression "thika tenant" has been retained as a term of description to economise language. The learned Standing Counsel has contended that apart from Article 39(b) and (c), other principles in Part IV have been satisfied by the impugned Act. He has also contended that owners and occupiers belong to different classes. Hence, there is no occasion to treat unequals as equals in the matter of compensation under the impugned Act. He has contended that if the occupier has not been given compensation, it cannot be held that same offends Article 14 or any other Article of the Constitution.

39. The learned Counsel appearing for the Indian Oil Corporation Limited has also supported the learned Additional Advocate General and the learned Standing Counsel and has contended that the Act is ultra vires the Constitution and the lands comprised in thika tenancy include lands which have been let out and on which the tenants have constructed pucca structure. It has been contended by the learned counsel that since the exclusion made by Section 2(5) of the 1949 Act have been deleted in the impugned Act, the earlier cases decided by this Court on the definition of "any structure" have lost their force and it has been contended that the thika tenancy has not been abolished.

40. In answer to the aforesaid contention made by the learned Additional Advocate General and also by the learned Standing Counsel, Mr. Pal has contended that in support of the writ petitions, the petitioners have submitted before this court the various reasons as to why vesting should be restricted either to all lands comprised in thika tenancies only or at the highest to the lands comprised in thika tenancy and khatahs as held by the Division Bench in *Jatadhari Daw's* case (1986 (1) CHN 21). A thika tenancy can only come into existence by

a division of title, i.e. land belonging to a third person under whom thika tenant is a lessee and the structure on the land belongs to the thika tenant. Mr. Pal has contended that if a thika tenant under 1949 Act has made a pucca structure contrary to the provisions of the said Act, such thika tenant did not automatically cease to be a thika tenant but was liable to be evicted for the breach of the provisions of the said Act and a thika tenant who has constructed a pucca structure in violation of the provisions of the Act though does not cease to be a thika tenant ipso facto but it cannot be said that a thika tenant under the 1949 Act has right to make pucca structure. Mr. Pal has contended that a person who takes lease of land from another and erects a pucca structure on such land is governed by the general law of the land viz. the Transfer of Property Act. A thika tenancy can only originate if the initial structure is a kutcha structure on a particular type of lease as indicated in the 1949 Act, Commenting on the submissions of the learned Additional Advocate General that the judgment reported in (1962) 66 CWN 338 is an obiter dictum as has been held by this court in the decision reported in Manindra Nath Ghose Vs. Sm. Ashalata Mitra and Others, , Mr. Pal has contended that in that case, the question arose for consideration as to whether the structure must be erected or acquired after obtaining lease of land to come within the definition of thika tenant in Section 2(5) of the 1949 Act. The Division Bench in the case reported in 66 CWN 358 has observed at page 432 that it is immaterial whether or not the fact of obtaining such tenancy right or acquisition of the same by purchase or gift preceded the erection of structure. The Division Bench in Manindra Nath Ghose Vs. Sm. Ashalata Mitra and Others, has only considered the aforesaid observation made in the decision reported in (1962) 66 Cal WN 338 as obiter and it has not been held that any observation that thika tenancy comprises kutcha structure only is obiter. Commenting on the submission of the learned Advocate General that Section 6(3) of the impugned Act provides for regulating construction of haphazard pucca structure, Mr. Pal has contended that such submission has no factual basis. He has submitted that the regulation of construction of haphazard pucca structure in the city of Calcutta or in the town of Howrah are taken care of by the concerned Municipal Acts which contain elaborate rules and regulations relating to construction of new building and making additions or alterations thereto. Mr. Pal has submitted that the legislature was aware that thika tenancy structure comprises kutcha structure and it has been therefore provided that any pucca structure should not be constructed without satisfying the preconditions contained in Section 3. Mr. Pal has also contended that the contention of the learned Additional Advocate General that if a law gives effect to Article 39(b) and (c) in stages then Article 31C is satisfied is wholly irrelevant in the present context. The question in this case is whether the impugned Act gives effect to Article 39(b) and (c) at all and the learned Additional Advocate General has failed to demonstrate as to how the Act gives effect to Article 39(b) and (c). Mr. Pal has submitted that the principle that a party who alleges the breach of fundamental right is required to substantiate his allegation is unexceptionable. When the State intends to seek protection of Article 31C for the validity of an Act, it is for the

State to establish and prove nexus between the law and Article 39(b) and (c) and the observation of Mr. Justice Bhagabati (as his Lordship then was) in *Minerva Mill's case* which was quoted with general approval in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited* and Another, amply supports the contention that if protection under Article 31C is claimed, the party who seeks protection under that Article must establish and prove nexus between the law and Article 39(b) and (c). Mr. Pal has contended that the submissions of the learned Additional Advocate General that the lands in question could not have been acquired either under the Land Acquisition Act or under any other Act is basically fallacious because the lands could have been acquired under Land Acquisition Act although object of the Act as a whole could not have been achieved by acquiring the land under the Land Acquisition Act. Mr. Pal has contended that the condition precedent for applicability of Article 14 in this context is not that the concerned lands could have been acquired under two or more Acts. He has contended that the decisions reported in *State of Kerala and Others Vs. T.M. Peter and Others*, and *Prakash Amichand Shah Vs. State of Gujarat and Others*, are clearly distinguishable and do not cover the problems raised in the instant case. Commenting on the submissions of the learned Additional Advocate General on the legislative competence in enacting the impugned Act, Mr. Pal has submitted that the observation of the Division Bench in the case reported in (1986) 90 Cal WN 226 is obiter and the observations in *Sri D. Basu's Shorter Constitution* since referred to by the learned Additional Advocate General are not cogent and are attempted to oversimplify the problem. Mr. Pal has further submitted that the submission of the learned Additional Advocate General that *thika* tenant's earning has not touched and therefore it is not necessary to compensate him for the loss of his interest in the land is misconceived. He has also submitted that the learned Additional Advocate General has only pointed out Section 8(1) which provides for compensation to landlords but the implication of Section 8(1) as pointed out by the petitioners has not been dealt with by the learned Additional Advocate General and his contention that Section 8(1) provides for compensation to landlords cannot be accepted. Mr. Pal has refuted the correctness of the contention of the learned Additional Advocate General that there is no vagueness and uncertainty about the comprehensive development plan or improvement scheme because the land development cannot be indicated by any precise description. He has contended that mere satisfaction of a public purpose does not satisfy the requirement of comprehensive development plan or improvement scheme and such comprehensive development plan or improvement scheme in the absence of any guideline cannot but remain in the realm of subjective satisfaction of the concerned individual. Mr. Pal has contended that the decision relied on by the learned Advocate General in *Sadrudin Suleman Jhaveri Vs. J.H. Patwardhan and Others*, in this context is clearly distinguishable because in that case the question was whether the definition of public purpose in Section 3(2)(f) of the Land Acquisition Act as amended locally in Bombay by the Land Acquisition (Bombay Amendment) Act, 1953 fits in with the concept of public purpose. Section 3(2)(f)

was in the following terms :

"the acquisition of land for purpose of the development of the areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development."

The Division Bench has held that although Section 3(2)(f) has enlarged the connotation of the expression "public purpose" still the said definition has implicit in it the idea of a public purpose and to that extent the definition does not conflict either Section 6 or Article 31 which lays that as condition for acquisition of the citizen's property there should be a public purpose. Mr. Pal has also contended that submission of the learned Advocate General on the validity of the Act vis-a-vis Article 21 of the Constitution is misconceived and the learned Additional Advocate General has not dealt with reasons given by the petitioners in this context. Commenting on the learned Additional Advocate General's submission that non-application of mind or application of legislative decision and functions in enacting a law does not render the law as invalid, Mr. Pal has contended that if there is any non-application of mind or uncertainty then the concerned statute is not law within the meaning of Article 245 of the Constitution. The decision reported in *Municipal Committee, Amritsar and Others Vs. State of Punjab and Others*, since relied on by the learned Additional Advocate General is of little assistance to meet this challenge. Mr. Pal has contended that the Supreme Court in that decision found that the expression "cattle fair" must be deemed to have been used in its ordinary significance and was therefore not vague. Mr. Pal has further submitted that the subsequent decision of the Supreme Court by five Judges reported in *K.A. Abbas Vs. The Union of India (UOI) and Another*, should have considered the law enunciated by the Supreme Court. Mr. Pal has submitted that as a matter of fact, a decision reported in *Municipal Committee, Amritsar and Others Vs. State of Punjab and Others*, was considered in the subsequent decision of the Supreme Court by the five Judges' Bench reported in *K.A. Abbas Vs. The Union of India (UOI) and Another*, and the observation relating to the vagueness in the earlier decision *Municipal Committee, Amritsar and Others Vs. State of Punjab and Others*, was held to be obiter having gone too far.

41. Referring to the contentions made by the learned Standing Counsel, Mr. Pal has contended that the scope and effect of Article 21 and particularly the word "life" have been clearly laid down by the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and as such there is hardly any scope of comment or debate on the scope and effect of Article 21. Mr. Pal has contended that the preamble is a basic structure of the Constitution as has been held in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, . Mr. Pal has also submitted that the contention of the learned Standing Counsel that the land which once or at any time was comprised in thika tenancy vests under the impugned Act is totally fallacious and without any basis whatsoever. He has

also submitted that the submissions of the learned Standing Counsel that apart from Article 39(b) and (c), other principles in Part IV are also attracted to the impugned Act are totally misconceived and without any foundation. Mr. Pal has also submitted that there is no logical basis for the submissions of the learned Standing Counsel that since the owners and occupiers belong to different classes, one of them need not be given compensation. Such contention ignores the basic principle of Article 14 that the differentiation must have a nexus with the object.

42. After considering the respective contentions of the learned counsels appearing for the parties it appears to us that for construing the provisions of Section 5 of the impugned Act, the meaning of the expressions "thika tenancy" and "other lands" is to be ascertained. According to the submissions of the learned Advocates of the petitioners only thika tenancy lands having temporary or kutcha structure and lands comprising thika tenancies with kutcha structures used as a "Khatal" are intended to be vested and if in addition to such lands "other lands" unconnected with thika tenancies are also to vest u/s 5 of the impugned Act as sought to be contended by the learned Additional Advocate General, by giving a wide import to the aforesaid expressions such vesting of various categories of lands and structures will lead to a result in some palpable and evident absurdity. The principle of interpretation in such a situation can be found out in the case of *A. G. v. Lackwood*, reported in (1842) 9 M & AP 378 . The relevant observation may be quoted as follows : --

"The rule of law I take it upon the construction of all statutes is, whether they be penal or remedial, to construe them according to the plain, literal and grammatical meaning of the words in which they are expressed unless that construction leads to a plain and clear contradiction of the apparent purpose of the Act or to some palpable or evident absurdity."

In *Seafore Court Estate Limited v. Asher*, reported in (1949) 2 KB 481 Denning L.J. held "We do not sit here to pull the language of Parliament to pieces and make nonsense of it, that is an easy thing to do and it is a language to which lawyers are too often prone. We sit here to find out the intention of the Parliament and the Ministers and carry out duty and we do them proper by filling in the gaps making sense of the enactment than by opening it up by destructive analysis."

43. Keeping in mind of the principle of interpretation indicated hereinabove, an attempt should be made to ascertain what was the mischief sought to be remedied by the impugned legislation. If the interpretation put forth by Mr. Gupta, the learned Additional Advocate General appearing for the State Respondents is accepted in toto, it appears to us that the same would undoubtedly produce palpable injustice, anomaly, contradiction and lead to absurd results and in order to avoid such peculiar situation, a reasonable meaning to those words should be given which does not cause any ambiguity and/or absurdity and the mischief sought to be remedied is also properly achieved. In this connection, the title of the impugned Act may supply some

guidance to the construction of Section 5 of the impugned Act. Although, the title does not override the plain meaning of the section but in case of ambiguity and doubt, the title serves as a good guideline. The title of the impugned Act only refers to acquisition and regulation of thika tenancy (by repealing the Calcutta Thika Tenancy Act, 1949). Looking into the history of the legislation and purpose of the legislation, it appears to us that the impugned legislation is plainly to abolish the rights of the landlord over the lands held by thika tenants which were so long governed by the provisions of Calcutta Thika Tenancy Act, 1949. The passage quoted from Cooley's "A Treatise on the Constitutional Limitations" at pages 143 and 149 since referred to by Mr. Pal appearing for some of the petitioners may not be wholly applicable while construing a provision of statute in our country. The legislation in our country is not bound by the title to an Act strictly and the legislature can travel beyond the title but at the same time Constitution makers did not intend that the legislature will pass an altogether different Act under the cover of a title thereby misleading the legislators themselves and also the authority requiring to give assent to the legislation. In our view, it should be the endeavour for the Court to strike a balance by giving a meaning which has connection with the title of the Act and the intention of the legislature and the evil sought to be remedied. At the same time, the Court has to interpret the Act in such a manner so that it may not lead to any destructive result and/or absurd or inconsistent situation. In our view, while interpreting the words "other lands" after the words "thika tenancy" the legal maxim *eiusdem generis* (of the same kind) and the maxim *noscitur a sociis* (a thing is known by its companion) should be borne in mind. Applying these legal maxims, it appears to us that "other land" appearing in Section 5 of the impugned Act must mean land falling under the category of thika tenancy land. This general word following a specific word must apply not to different objects of a widely differing character, but something which can be called a class or kind of objects. In this case, from the title, preamble of the Act, the intention of the legislature as also on consideration of the mischief sought to be remedied by the impugned Act it must be held that "other land" must be land coming within the category of thika tenancy land. If however appears that besides the lands comprising thika tenancies lands used as khatahs and the right, title and interest of landlord in such khatahs are intended to be vested u/s 5. Lands comprising pucca and permanent structures erected by the tenant for user of the land for khatahs and lands used for khatahs held under a lease for a period beyond twelve years cannot comprise thika tenancy within the meaning of "thika tenancy" under the Calcutta Thika Tenancy Act. It also appears to us that the expression "thika tenancy" under the aforesaid Act has been judicially noted in various decisions of this court as referred to by Mr. Pal and it must be accepted that the Legislature is aware of the meaning of such expression and has, therefore, used the expression on the basis of the said accepted meaning. But it appears to us that Section 5 expressly envisages vesting of khatahs although all khatahs may not conform to "thika tenancy" within the meaning of thika tenancy under the Calcutta Thika Tenancy Act, 1949 which is repealed by the impugned Act. In view of express

reference of khatal without any reservation in Section 5, we are inclined to hold that although the impugned act is essentially a piece of legislation for vesting of thika tenancy lands and temporary or kutcha structures thereon and for regulation of such lands and structures and the title of the Act and the provision for repealing the Calcutta Thika Tenancy Act, 1949 also conform to such intention and purpose of the impugned legislation, khatal lands held on lease even if such lands do not comprise thika tenancy within the meaning of thika tenancy under the Calcutta Thika Tenancy Act also vest u/s 5. It appears to us that most of the khatal lands comprise kutcha or temporary structure and they also comprise thika tenancies within the meaning of "thika tenancy" under the said 1949 Act. We may also take judicial notice that in majority cases, thika tenancies comprise bustees and/or slums and the legislature has intended to vest thika tenancies and structures thereon for regulating such thika tenancy lands. It therefore appears to us that with an intention to regulate khatal lands, along with other underdeveloped lands and structures mainly comprising bustees or slums, the legislature has expressly included khatal lands in Section 5 for the purpose of vesting of such khatal lands and consequential control and regulation of khatal lands. We therefore approve the interpretation of Section 5 of the impugned Act as made in the Bench decision of this Court in Jatadhari Daw's case, Appeal No. 239 of 1978 reported in (1986) 1 CHN 21. Save as aforesaid, no other land or structure vest under the impugned Act.

44. Coming to the question of vires of several provisions of the impugned Act on the ground that it contravenes the provisions of Articles. 14, 19, 21 and 26 of the Constitution, it has been submitted on behalf of the petitioners that the impugned Act is not protected by the provisions of Article 31C of the Constitution, although it has been stated in the preamble of the Act that the impugned Act has been passed inter alia for planned development and distribution of such land with a view to subserve the common good. The learned counsel for the petitioners have contended that the vires of the Act can be successfully challenged if it can be shown that some of the provisions of the Act clearly contravene the rights ensured by the articles of the Constitution. Article 39(b) and (c) of the Constitution provide that State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the abolition of economic system does not result in the concentration of wealth and means of production to common detriment. It has been contended on behalf of the respondents that the impugned Act is fully protected under Article 31C of the Constitution. As such, the challenge of vires of the impugned Act on the score of contravening some of the Articles of the Constitution is not open. After referring to the various provisions of the impugned Act it appears to us that the impugned Act cannot be said to have been passed to protect the interest of the thika tenants inasmuch as the thika tenant's rights over the lands have been completely taken away without making any provision for compensation for leasehold interest. The thika tenant's rights on the structure of the land has also

been made dependant on various contingencies and a thika tenant is liable to be evicted at any time for no fault on his part but on account of some activities of the bharatia. The Act has put onerous duties and unreasonable obligation upon the thika tenant u/s 6(3) of the impugned Act in the matter of construction of pucca structure. The Act and/or Rules framed thereunder do not indicate what is meant by the expression "comprehensive development plan or improvement scheme for the holding." We may take judicial notice of the fact that in Calcutta and other municipal areas whenever any construction is to be made, one has to take sanction from the concerned Municipal authorities and in all Municipal Acts, certain guidelines are given in the form of building rules which are required to be observed while preparing a plan. There is force in the contention of the learned counsel of the petitioners that in the absence of guidelines or criteria regarding "comprehensive development plan or improvement scheme for the holding" a plan submitted by the thika tenant before the prescribed authority is likely to be rejected on the whims and caprice of such authority more so when such authority is not required to give any hearing and/or reasons for such rejection. Moreover, when a thika tenant has been deprived of his rights, title and interest of the land u/s 7(1) of the impugned Act, a thika tenant is likely to be totally discouraged to take any initiative for making any pucca structure for implementing the comprehensive development scheme. It appears to us that u/s 7 of the Act, interest of all persons including the landlord and the thika tenant in the land in question is abolished and is vested to the State free from encumbrances. The only right which a thika tenant has been given is merely to occupy the structure on some terms and conditions as embodied in Rule 3 of the Rules framed under the impugned Act. It appears that the thika tenant occupying such land can be evicted at any time even though on grounds and circumstances beyond the control of such thika tenant. The interest of three classes of people are involved in the impugned Act, viz. (a) thika landlord and landlord of khatal land, (b) thika tenant and tenant of khatal land, and (c) bharatias. The interest of the landlord is sought to be taken away and vested to the State free from encumbrances and the interest of the thika tenant has also been taken away reserving a limited right of the thika tenant to occupy such land not as a tenant but on some terms and conditions making it clear that breach of any such terms and conditions will make the thika tenant liable to be evicted not by an order of the Court, but by an order passed by the prescribed authority. It appears to us that the protection given to the thika tenants under Calcutta Thika Tenancy Act, 1949 have in fact been taken away under the impugned Act and the temporary nature of thika tenancy has been made extra temporary, thereby making the position of thika tenant worse than before. It does not appear to us that such position of the thika tenants serves any common good. It however appears that the bharatias have been benefited by the impugned Act inasmuch as the bharatia's interest is sought to be protected to some extent. In this connection we may also note the submission of Mr. Pal that in the absence of any compulsive requirement of a thika tenant for making construction of the structure if the same ceases to exist for any reason whatsoever within a period of 12 years the

bharatia loses his right to occupy the structure to be built at a later date. The relationship between the thika tenant and the bharatia has been regulated by the impugned Act. The bharatia under the thika tenant has been given the status of a full-fledged tenant under such thika tenant and the provisions of West Bengal Premises Tenancy Act, 1956 had been made applicable to such bharatias. The bharatia has been made a permanent incumbent on the land in question and it has been provided u/s 11(2) of the impugned Act that even after the structure comprised in such tenancy becomes non-existent, the relationship between a thika tenant and bharatia will not be extinguished and if any pucca building or structure is constructed by a thika tenant within 12 years from the date when old structure had ceased to exist after obtaining the permission and approval in writing after submitting comprehensive development plan or improvement scheme, the bharatia has to be put back in possession on the same rent which the bharatia had been paying 12 years back. It does not require any exercise of skill to find out that the provisions of Section 11(2) of the said Act is quite against the interest of the thika tenant and it is very difficult to reasonably expect that any thika tenant would make any attempt to construct a pucca structure for the purpose of planned development by incurring heavy expenditure against his interest. If the right of a thika tenant is a precarious right, the thika tenant will be little interested in making construction to achieve a comprehensive development plan and/or improvement scheme. The obvious result will be that thika tenancies comprising large number of slums in the city of Calcutta and surrounding areas in Howrah will remain in the same position. In many cases, the thika tenants have let out the whole or a major part of the structure constructed by the thika tenants and it must be presumed that the legislature is fully aware of such a situation. If on making a pucca structure on the basis of sanctioned plan or improvement scheme submitted by the thika tenant after lapse of 10/12 years, the erstwhile bharatia is required to pay the same rent which he had been paying for the kutchha structure 10 to 12 years back, it can be reasonably held that the thika tenant will have very little interest to make pucca structure for a planned development. There is no provision which requires the State Government to make comprehensive development of the structures comprising thika tenancies for subserving the common good as contemplated in Article 39(a) and (b) of the Constitution. In the aforesaid circumstances, the learned counsel for the petitioners are justified in their contention that the Act although professes that it is intended to subserve the common good, in reality it is not directed to bring into effect any such activities resulting in subserving the common good. In the circumstances, in our view, the Act is not protected under Article 31C of the Constitution.

45. It has been contended by the learned counsel of the petitioners that the impugned Act particularly the provisions of Sections 5, 8 and 27 of the Act are discriminatory and violative of Article 14 of the Constitution. It has been contended that u/s 5 of the impugned Act not only the lands comprised in thika tenancy have been vested, but thika tenancy land held under any person in

perpetuity or under a registered lease for not less than 12 years have been vested and land held under any person for a period less than 12 years have not vested. It has been submitted that vesting of land held under the lease for a period more than 12 years and for a period less than 12 years has no rational relation with the object sought to be achieved. It has also been contended that under the repealed Act, viz. the Calcutta Thika Tenancy Act, 1949, a person holding land in perpetuity or under registered lease for a period of more than 12 years was excluded from the purview of the said Act. It has been contended that Article 14 forbids class legislation although it does not forbid reasonable classification for the purpose of legislation. In order to pass the test of permissive classification, two conditions must be fulfilled, viz. (a) that classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (b) that differentia must have a relation to the object sought to be achieved by the statute in question. It has been contended by the learned counsel for the petitioners that thika tenancy land held under a registered lease for a period of more than 12 years and for a period less than 12 years fall within the same class and must be held similarly circumstanced and there is no reasonable basis for making such classification. Accordingly, such classification having no nexus with the object sought to be achieved is ex facie arbitrary and discriminatory and offends Article 14 of the Constitution. The learned Additional Advocate General appearing for the respondents could not meet this argument excepting by submitting that if the legislature had thought it fit that a person holding land under a lease in perpetuity or for a period more than 12 years are differently situated than that of d, (J73j:42J468:3722j1:j072j:40:j43f:4292J;09 reasonable. We are, however, unable to accept such wide contention of the learned Additional Advocate General. It has been submitted on behalf of the petitioners that u/s 8 of the impugned Act, the owner of the land is entitled to get compensation to be determined in accordance with the provision of Section 8(1) of the impugned Act and that if there was any structure on such thika tenant, the thika tenant is entitled only to get compensation for the structure. No compensation has been provided for vesting of other categories of land in so far as the interest of the lessees and/or the tenants in such other lands for losing the right as a lessee or tenant is concerned. It has been further submitted that the amount of compensation could not be varied on the basis of the user of the land. It has also been contended on behalf of the petitioners that the amount of compensation payable under the impugned Act is different from the amount of compensation payable under the other laws as for example, the Land Acquisition Act. Under the Land Acquisition Act, the compensation payable according to the market value but under the impugned Act, owner of such land will only get a nominal compensation. It has however been submitted by the learned Additional Advocate General and other counsel appearing for the respondents that the right or interest sought to be acquired under the impugned Act cannot be acquired under any other law and as such the question of making any discrimination in the matter of payment of compensation does not and cannot arise. Referring to the

decisions reported in Ramendra Nath Nandi and Others Vs. State of West Bengal and Others, Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma, and State of Kerala and Others Vs. T.M. Peter and Others, , the learned counsel for the petitioners have contended that different Acts which provide for requisition or acquisition of land for different purposes may be enacted but compensation or additional compensation by way of solatium as provided u/s 23(2), Land Acquisition Act, cannot be denied. It however appears to us that the case laws cited above are not fully applicable in the instant case. It is not the case where the different Acts are operating in the same field and the acquisition and requisition could be effected under one Act or the other. The interest of the thika landlord and/or thika tenant could not be vested under any of the existing laws. Accordingly the interest sought to be acquired under the impugned Act is different from the interest of the landlords and tenants intended to be acquired under the other existing laws. Hence, the question of making discrimination in the matter of payment does not arise. But the question which is required to be considered in the instant case is whether or not the State can extinguish the interest of the thika tenant without payment of any compensation. Mr. Pal has contended that the obligation to pay compensation for acquisition of property flows from the preamble to the Constitution of India and the amendment of the Constitution by deleting Article 31 and introducing Article 300A has not altered the position. The learned Additional Advocate General has, however, contended that in view of the abolition of Article 31 of the Constitution and introduction of Article 300A in the Constitution, property can be acquired without payment of any compensation. It has also been submitted that provisions have been made in the impugned Act for giving some compensation to the landlord. It has been submitted that the interest of other type of lessees have been intended to be vested without paying any compensation but under the Constitution, it is not necessary to pay compensation for acquisition of such interest. The learned Additional Advocate General has relied on a Bench decision of this Court reported in (1986) 90 Cal WN 226, wherein it has been held that right of compensation in case of acquisition of property flew from the provisions of Article 31(2) of the Constitution. The citizen's right to get compensation has been taken away by the amendment of the Constitution and under Article 300A of the Constitution, the only requirement is that the property can be acquired by a law which may not provide for any compensation. The learned counsel for the petitioners, however, relied on a Bench decision of the Bombay High Court reported in Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another, , wherein a contrary view has been taken by the Bombay High Court. It has however been submitted by the learned Additional Advocate General that the observation of the Bombay High Court was only obiter and the correct position in law has been laid down by the Bench decision of this Court. Mr. Pal, the learned counsel appearing for the petitioners, has contended that the right to get compensation for public purpose must be read into the entry No. 42 of List II of the 7th Schedule of the Constitution inasmuch as eminent domain of the sovereign to acquire property for public purpose upon making just compensation

is an inbuilt safeguard to the power of acquisition or requisition. In this connection, reliance was placed by Mr. Pal on the observation of the Supreme Court made in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . Reliance was also placed on another decision of the Supreme Court reported in State of West Bengal Vs. Union of India, . It has been contended compensation is an inbuilt safeguard to the power of acquisition or requisition. In this connection, reliance was placed by Mr. Pal on the observation of the Supreme Court made in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . Reliance was also placed on another decision of the Supreme Court reported in State of West Bengal Vs. Union of India, . It has been contended on behalf of the petitioners that Article 300A of the Constitution is wide enough to cover deprivation of property in exercise of police power and deprivation by acquisition and requisition is in the exercise of power of eminent domain. The deprivation of property by exercise of police power takes place by way of punishment for commission of any offence and in the instant case the question of deprivation of property by police power does not arise. Mr. Pal has contended that the legislative power in entry No. 42 of List II of the 7th Schedule of the Constitution should not be construed as conferring power to acquire property for private purpose. Such construction would permit arbitrary exercise of power of the legislature inasmuch as there would not be any objective or standard for testing private purpose. This would in effect mean that the legislative power under entry 42 can be used to defeat Article 14. It has been contended that the legislative entry must be read harmoniously with Article 14 and the scope of the entry should be determined accordingly. It has been also contended that the words "public purpose" and "compensation" are noble restrictions in the entry itself and even after the abolition of Article 31 from the Constitution, no law can be passed without providing compensation or without having any public purpose behind it. In this connection, reference has been made to the decision of the Supreme Court of U.S.A. made in the case of Missouri Pacific Railway Company v. State of Nebraska, reported in (1896) 41 Law Ed 489 and another decision of the Supreme Court of United States in the case of Chicago Burlington & Quincy Rail Road Company v. State of Chicago, reported in (1896) 41 Law Ed 979. Reference has also been made to the English decision made by the House of Lords in the case of *Burmah Oil Company v. Lord Advocate*, reported in (1964) 2 All ER 348 and *A. G. v. D. Keyser Royal Hotel*, reported in (1920) App Cas 508 . Mr. Pal, the learned counsel appearing for the petitioner has submitted that in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, the majority of Judges of the Supreme Court (per Sikri, C. J., Shelat, Grover, Hegde, Mukherjee, Reddy and Khanna, JJ.) have held that the objective specified in the preamble of the Constitution is one of the basic structures of the Constitution. It has been pointed out that in the preamble to the Constitution, it was inter alia declared that the Constitution is aimed "to secure to all its citizens : justice, social, economic and political." Relying on the preamble of the Constitution which is one of the basic structures of the Constitution, it has been contended that citizen's right to get compensation in case of total deprivation of property without paying any compensation whatsoever will be contrary to the basic guarantee and/or protection to the citizens given in the preamble to the

Constitution inasmuch as deprivation of property without compensation, in the facts and circumstances of the case, would be total denial of social and economic justice. It has been further contended that the landlords were earning their livelihood in most of the cases by letting out the properties to thika tenants. In the instant case, just giving a nominal compensation which is illusory and which in some cases is only 1/1000th part of the market value of such property in Calcutta is practically no compensation at all. By such illusory compensation there has been denial of social and economic justice to these categories of people and only means of livelihood of such persons is intended to be taken away without making any compensation which cannot but amount to denial of economic and social justice to these people. The learned Additional Advocate General has, however, pointed out that deprivation of property without paying any compensation may be a cause of denial of economic justice but deprivation to a rich people of a part of his property without paying any compensation would not be a case of denial of social justice.

46. The relevant particulars about the properties held by the thika landlords and the relative income from such thika tenancies have not been placed before us and it is not possible to decide as to the extent of suffering of such landlords for want of proper and adequate compensation. It has, however, been submitted before us that in one of the writ petitions, it is an admitted position that a widow has only 3 cottahs of land comprising thika tenancy and she is affected by the impugned Act and the interest of the widow in such land is intended to be taken away by giving a compensation which is only 1/1000th part of the market value of such land.

47. In our view, the proposition that even after the amendment of the Constitution by deleting Article 31 and introducing Article 300A, the right to get compensation has not been affected because such right to get compensation for acquisition of property by way of economic justice flows from the preamble to the Constitution which is a basic structure of the Constitution requires a very careful consideration. Two celebrated commentators of the Constitution of India, Mr. Seervai and Dr. D. Basu have differed in their views. While Mr. Seervai opines that even after the amendment of the Constitution introducing Article 300A, the right to get compensation has not been wiped out, Dr. D. Basu has taken a contrary view. The judicial decisions in Indian High Courts are also not uniform. While a Division Bench of this Court has held that after amendment of Constitution and introduction of Article 300A the right to get compensation has been taken away (1986) 90 Cal WN 226, the Division Bench of the Bombay High Court has held on a different note : Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another, . In this connection, reference may be made to the decision of the Appeal Court of England in the case of Attorney General v. De Keyser's Royal Hotel Ltd. reported in 1920 AC 508. It has been held in the said decision that the right to get compensation is implicit in case of acquisition of property for public purpose. The aforesaid decision in D. Keyser's case has been noted with approval by the Supreme Court in The State of Bihar Vs.

Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, . Unlike the Constitution of U.S.A. there is no express provision in English law to make compensation for acquisition of property for public purpose but as aforesaid, it has been held that such right to get compensation is an implicit condition for acquisition of property.

48. There is no manner of doubt that the preamble indicates the props on which the grand edifice of the Constitution stands and viewed from this angle, the preamble is undoubtedly a basic structure of the Constitution. In this connection it should not be lost sight of that without successfully challenging the vires of the Constitutional Amendment Act, the validity of a particular article of the Constitution as amended cannot be challenged. It appears to us that in the absence of a declaration that a particular Amending Act of the Constitution is ultra vires, the amended provision of the Constitution cannot be limited either by the preamble or by the directive principle. Article 300A, therefore, operates without being limited or restricted by the preamble. Article 300A however does not expressly provide that no compensation need be paid for acquisition of the property. In this connection we may incidentally note that in order to bar a privilege of getting second show cause notice, Article 311 has been amended expressly containing that no second notices to be served but there is no such part in Article 300A. But if the decisions of the Supreme Court and consequential amendments of Article 31 of the Constitution and ultimate abolition of the same from Part III of the Constitution and introduction of Article 300A are considered in their proper perspective, there is no manner of doubt that it is no longer an intention of the legislature that right to get compensation for acquisition of property is a fundamental right. If the right to get compensation by way of economic and social justice is accepted, and is to be read in entry 42 of List II of Seventh Schedule, in ultimate analysis, the right to get adequate and/or reasonable compensation as a logical conclusion of such right to get economic justice cannot but be accepted in a good number of cases. In the backdrop of legislative changes by amending the Constitution by deleting Article 31 and introducing Arttion of the material resources of the country is one process. If for achieving the avowed policy acquisition of particular type o view, economic justice contemplated in the preamble has to be viewed in the light of avowed declaration that India shall be Socialist Democratic Republic. Socialist Democratic Republic intends to achieve socialism by democratic process. Nationalisation of the material resources of the country is one process. If for achieving the said avowed policy acquisition of particular type of property is to be nationalised it is quite likely that such nationalisation may not be a practical proposition if adequate or fair compensation by way of economic justice is to be paid to the affected persons. Economic justice, in our view, should be considered not in the context of an individual affected by a legislation but in the context of the well being of citizens of India as a whole by the desired effect of the concerned legislation. We may also indicate here that under the American Constitution there is express provision that a citizen's property cannot be acquired without paying

just compensation but such provision does not find place in our Constitution as amended. We may, however, indicate here that even after amendment of the Constitution by deleting Article 31 and introducing Article 300A, no piece of legislation has been cited at the bar where there is no provision for payment of any compensation for acquisition of property. It is also pertinent to point out in this connection that there is basically a difference between acquisition of property in the exercise of right of eminent domain and confiscation of property in exercise of police power. If no compensation whatsoever is provided for in a legislation for acquisition of property, the same may in effect amount to confiscation. We may reasonably expect that the legislature should not lose sight of this aspect in enacting legislation for acquisition of property. It is however not necessary to dilate further on this point for the disposal of these cases. A thika tenancy is constituted if a lease is followed by construction of a kutcha structure on the leasehold land. Construction of a kutcha structure is a sine qua non for constituting a thika tenancy. In the impugned Act, although there is no provision for payment of compensation to the thika tenant for the leasehold interest of the land in question, provision for payment of the structure in case of dispossession of the thika tenant, has been provided for. Since structure is an integral part of the thika tenancy, compensation for structure amounts to some compensation for ultimate loss of benefit of thika tenancy. Accordingly, we are inclined to hold that in the impugned Act, there is provision for payment of some compensation both to the landlord and also to the thika tenant.

49. It has also been contended by the petitioners that provisions of Section 27 of the impugned Act is violative of Article 14 of the Constitution inasmuch as Section 27 confers an arbitrary, uncanalised and uncontrolled power on the State machineries. It appears that u/s 27 of the Act the State Government can make use or settle with any person or authority any land or structure vested in or resumed by the State Government under the impugned Act to subserve the common good on such terms and conditions and in such manner as may be prescribed. Section 27 has been given an overriding effect over all the sections of the impugned Act. The net result is that by invoking Section 27 of the impugned Act, the State Government is competent to evict any thika tenant or bharatia and evict any person from the land in question without having any regard to the rights and protections given under Sections 6, 7, 8, 9 and 11 and other provisions of the impugned Act. On a plain reading of Section 27 of the impugned Act, it appears to us that once a vesting takes place under the impugned Act u/s 5 the State Government will be competent to make use or settle with any person or authority any land or structure vested in it without observing any formality and/or without affording any opportunity in the absence of any guideline whatsoever in the matter of taking possession of any land or structure by the State Government u/s 27 of the impugned Act. The wide power u/s 27 which overrides the provisions of other sections of the impugned Act can be exercised according to the sweet will of the officers of the State Government. The learned counsel for the respondents have submitted that Section 27 of the impugned Act

does not confer any uncontrolled and unguided power to the State to make use or settle the lands vested in it. It has been contended that only land or structure vested or resumed by the State under the provisions of the impugned Act can be taken possession of if the State Government think it that such action will subserve the common good. It has been contended that Section 27 protects the rights of the thika tenants and other persons as provided in Sections 6, 7 and other provisions of the impugned Act. We are, however, unable to accept such contention of the respondents. Section 27 of the impugned Act starts with the words "notwithstanding anything contained elsewhere in this Act or any other law for the time being in force." It is thus abundantly clear that the power conferred u/s 27 can be exercised irrespective of any of the provisions of the impugned Act and also other Acts. Such overriding effect makes it clear that the State Government can dispenses with any of the provisions of the Act, if in the opinion of State Government, the proposed action is intended to subserve the common good. What is the nature and extent of common good intended to be achieved by the impugned Act cannot be gathered under the provisions of the impugned Act or the rules framed thereunder. It appears from the rules that when the lands are settled to persons after evicting thika tenants or bharatias, such settlement should be on the basis of lease for five years or more so that the persons in whose favour settlement is to be made, gets an assured length of tenure but the thika tenants and bharatias who are going to be evicted in exercise of the power u/s 27 of the Act will be only silent spectators. Since Section 27 of the impugned Act Overrides the other provisions of the impugned Act and also other Acts, a bharatia can also be evicted irrespective of the protection given to such bharatia under the West Bengal Premises Tenancy Act. In substance, Section 27 being the last section of the impugned Act and the said section having been given an overriding effect over all the provisions of the impugned Act and other laws, it appears to us that the State Government can deal with any land or property which vests under the impugned Act in a summary manner for an alleged purpose which according, to the State Government, will subserve the common good and in a given case arbitrary action can be taken by the officers of the State Government on the subjective satisfaction of the concerned authority by evicting a thika tenant and/or bharatia. We may refer to the classical constitutional doctrine that wide discretionary power is incompatible with the rule of law. The Rule of law demands that the wide discretionary power should be eliminated and the law should be able to control its exercise. There are several requirements in the exercise of such a power and the basic requirement is the recognition that all powers have legal limits. The Court should draw such limits in a way which strike the suitable balance between the executive efficiency and legal protection of the citizen affected. It shall be the endeavour on the part of the court to see that no power is conferred upon the executive in such a manner that the uncanalised power is manifestly unjust and oppressive. If it appears that a wide and arbitrary power has been conferred on the officers of the State Government to deal with any property vested or resumed under the impugned Act without paying any compensation and without drawing up any proceeding

whatsoever the thika tenants and bharatias are likely to suffer immense prejudice on the caprice or whims of the officers of the State Government and whatever protection has been given under the other provisions of the impugned Act may be made nugatory by the arbitrary exercise of wide powers u/s 27 of the impugned Act.

50. For the aforesaid reason, in our view, Section 27 of the said Act must be declared ultra vires the provisions of Article 14 of the Constitution.

51. It has also been contended by the petitioners that provisions of Rule 3(i), (j), (k), (1), (m) and (n) of the Rules framed under the impugned Act have also given uncontrolled and unguided power on the officers of the State Government. It has been contended that such provisions have no nexus with the objects sought to be achieved by the impugned Act. On perusal of the said Rules, it appears to us that some rules are incapable of being complied with inasmuch as when the thika tenant has not given any right to make any pucca structure of its own and when the right to make pucca structure has been made dependent on various factors, it is not expected how a bustee or slum can be kept free from dirt and filth and when the boundaries out of the thika tenants are not fixed and/or fenced, how the obligations cast upon the thika tenants to keep the boundaries and fencing intact can be effectively complied with. Rule 3 lays down the terms and conditions under which the thika tenant can continue in occupation and it also appears that rules contain provisions under which it will be always possible to evict a thika tenant on the score of violation of the said rules because it will be very difficult and at times impossible for a thika tenant to comply with the requirements of the rules inasmuch as it will not be possible for the thika tenant to control the actions of a bharatia who may infringe the provisions of the rules. As an example we may assume that for an action of a bharatia in using the structure under his control as a place of worship, the thika tenant's right and interest over the structure may be lost. The terms and conditions contained in the rules, therefore, are not only arbitrary but also stringent and oppressive. The offending Rules, therefore, are wholly unjustified and should be declared ultra vires.

52. The learned counsel appearing for the Official Receiver on whose behalf some of the writ petitions have been filed has contended that Section 5 of the impugned Act is ultra vires the provisions of Article 25 and Article 26 of the Constitution on the ground that the lands in question comprising thika tenancies were held exclusively for religious purpose. Similar point has also been taken on behalf of a mutwali of a wakf estate in another writ application. It has been contended that the wakf estate is protected under Article 26 of the Constitution inasmuch as the muslim community is a religious minority and as such muslim has a right to acquire movable or immovable property and to administer such property in accordance with the Mohamedan law. It has been contended that if the thika tenancy land belonging to the wakf estate is vested, the purpose of the wakf will fail and consequently the mosque and other charitable purpose for

which wakf had been created cannot be maintained. The learned counsel appearing on behalf of the Official Receiver has contended that Official Receiver was appointed in respect of certain debuttar estates and from the income of such debuttar estates, temples are being maintained and the sheba puja of deities are performed. Article 25(1) of the Constitution provides that subject to public order or morality and health and other provisions of Part III of the Constitution, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion. Relying on this Article, it has been contended that a right to freedom of religion can only be curtailed and/or abridged on the ground of public order, morality and health and other provisions of Part III of the Constitution. In the instant case, such right to freedom of religion is being denied because of vesting of debuttar estate without making any provision for permanent annuity as provided in other Acts. In this connection, reference has been made to the provisions of Section 6(1)(i), Section 12(2) read with Section 17, West Bengal Estates Acquisition Act, which provide that where an intermediary is an institution established exclusively for religious or charitable purpose, the annual income of the property computed in accordance with the provisions of the said Act is to be given to the deity by way of annuity for the purpose of maintaining such charitable and/or religious institution. It has been contended that in the absence of any provision of giving permanent annuity under the impugned Act to the wakf estate and/or debuttar estate, Section 5 which intends to vest the thika tenancies and other lands including the wakf estate and debuttar estate must be declared ultra vires the provisions of Articles. 25 and 26 of the Constitution.

53. In our considered view, the contention raised in this regard appears to be of substance. The right of religious minority protected under Article 26 of the Constitution to own property and to administer such property and/or to establish and maintain institutions for religious and charitable purpose cannot be taken away by the impugned Act and further if the temples and/or the sheba puja of the deities cannot be maintained because of taking away of such property without providing for permanent annuity, the purpose of the trust is bound to be frustrated and the religious institutions so affected will come to an end thereby interfering with the right to profess and practise religion guaranteed under Article 25(1) of the Constitution. Applying such test we are of the view that Sub-section (2) of Section 8 read with Rule 5(1) Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 infringes Articles. 25 and 26 of the Constitution. In our view in the absence of any provision for reasonable permanent annuity for vesting of properties belonging to religious (rust and/or a wakf estate maintained for religious purpose, such properties belonging to religious trust or wakf estate will not be affected u/s 5 of the impugned Act. We are, however, not inclined to accept the contentions made on behalf of the petitioners that the impugned Act is bad for total non-application of mind by the legislature resulting in obvious inconsistencies in various provisions of the impugned Act thereby making the Act as a whole unworkable. It appears to us that some of the provisions of the

impugned Act and the Rules framed thereunder since indicated hereinbefore and to be indicated thereafter are not tenable and should be declared ultra vires but it cannot be held that the impugned Act as a whole is illegal, ultra vires and/or unworkable.

54. Mr. Bhunia, the learned counsel appearing in some of the writ petitions have contended that where a decree for eviction has been passed in favour of a landlord against a thika tenant and such decree after appeal and other legal proceedings has become final the right of the landlord cannot be affected u/s 5 of the impugned Act because in such circumstances it cannot be contended that there is any relationship of thika landlord and thika tenant. Section 19 of the impugned Act provides for that "all proceedings including appeals and/or all proceedings in execution of the orders passed in proceedings including appeals under the Calcutta Thika Tenancy Act, 1949 pending on the 19th day of July, 1978 for the ejectment of thika tenants and bharatias shall stand abated with effect from 19th day of July, 1978 as if such proceedings, appeals and execution proceedings had never been made.

55. The vires of Section 19 has been challenged on the ground that legislature has no power to declare any decision of a court of law to be void or of no effect. It has been contended that the legislature is competent to pass any major legislation within its legislative competency and a court of law can pronounce upon the validity of any law if the law or any provision of such law is held ultra vires the Constitution. It has been contended that Section 19 of the impugned Act is intended to override or set aside the decision of a court but the legislature has no right to do so under the Constitution. It has been submitted that it is always open to the legislature to give effect to a legislation retrospectively and to declare what the law should be deemed to have been from a particular date but the legislature cannot declare that a decision of a court properly constituted will be ineffective. In support of this contention, reliance has been made to the decision of the Supreme Court made in the case of Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another, and in the case of State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others, . The above decisions of the Supreme Court fully support the contentions of Mr. Bhunia that the legislature is not competent to make such provision by which judgment and order delivered by the competent court of law will stand set aside and the same will be declared null and void by the legislature because such provision will amount to direct inroad on the judicial power of the State. Under the Constitution a competent court of law can pronounce upon the validity of any law and declare the same to be null and void if it is beyond the legislative competence of the legislature or it is in conflict with the constitutional provisions. The legislature although supreme in its own field deserving utmost respect for being an institution elected by the people cannot within the framework of our Constitution declare any decision of the court of law to be void or of no effect. It also appears to us that there is substance in the contention of Mr. Bhunia that if a decree for eviction of a thika tenant has been passed and such a decree has not, been

varied or reversed by any superior court then on the face of such decree it must be held that there is no relationship of thika tenant and thika landlord between the parties. In that event, even if there is abatement of the execution proceeding, the relationship of thika landlord and thika tenant cannot revive on the date of commencement of the impugned Act and Section 5 of the impugned Act, therefore, cannot affect the right of the erstwhile thika landlords in whose favour decrees had already been passed by competent court of law and as such the lands in question are not "lands comprised in the thika tenancy" as referred to in Section 5 of the impugned Act. If a land which once comprised a thika tenancy but has ceased to be so in view of decree of eviction passed by a competent court cannot vest u/s 5 of the impugned Act, it appears to us unreasonable and unconnected with the purpose of the impugned Act to direct for abatement of execution proceeding for recovery of possession from erstwhile thika tenants thereby frustrating the decree passed by a competent court of law and creating an anomalous position that an erstwhile thika tenant who has no right to remain in possession in the land in question because of a decree of eviction passed against him will merrily continue unauthorised occupation without any obligation whatsoever either to the erstwhile landlord or to the State and the erstwhile landlord will suffer a prejudice without any remedy whatsoever in law. In our considered opinion, Section 19 of the impugned Act does not apply to cases where decrees for eviction passed against an erstwhile thika tenant have not been reversed and execution proceedings for eviction of such erstwhile tenant are pending. In such cases, the execution proceedings will remain unaffected, by Section 19 of the impugned Act. We may also note here that the definition of "thika tenant" u/s 3(8) of the impugned Act does not include erstwhile thika tenant whose appeal or against whom an execution proceeding was pending when the impugned Act comes in force. If an erstwhile thika tenant would have been made a "thika tenant" within the definition of thika tenant under the impugned Act, then the thika tenancy in question could vest u/s 5 and abatement of pending proceedings for eviction of such thika tenants including appeals and consequential execution proceedings could have been abated without any absurd consequence. In the aforesaid facts, Section 19 of the impugned Act in so far as it purports to abate execution proceeding for eviction of a thika tenant against whom a decree for eviction has been passed before enforcement of the new Act and an appeal preferred by a thika tenant against whom a decree for eviction has been passed do not abate and Section 19 is declared ultra vires in so far as the same purports to abate such proceedings. It also appears to us that the provisions of the West Bengal Land Holding Revenue Act, 1979 will be incongruous with the rent liability of a thika tenant whose interest will vest u/s 5 of the impugned Act particularly in view of declaration of some of the provisions of the said Act (Section 2(c)) as ultra vires by this court. In the aforesaid circumstances, Section 6(2) of the impugned Act excepting the proviso and Section 26 of the impugned Act should be declared ultra vires. We may add here that the proviso under Sub-section (2) of Section 6 of the impugned Act which remains unaffected and thus becomes a proviso to Section 6

of the impugned Act, takes care of the rent to be paid by the tenant to the State after vesting of the tenancy in question u/s 5 of the impugned Act.

56. For the reasons aforesaid we hold as follows : --

(a) The impugned Act is not protected under Article 31C of the Constitution as it is found on scrutiny of different provisions of the impugned Act that the impugned Act has not been enacted to give effect to provisions of Articles. 39(b) and (c) of the Constitution and the impugned Act is open to challenge on the score of violations of Part III of the Constitution.

(b) Within the scope and ambit of Section 5 of the impugned Act only lands comprised in thika tenancies within the meaning of the Calcutta Thika Tenancy Act, 1949 comprising a kutchha structure and/or a pucca structure constructed for residential purpose with the permission of the Controller under the Calcutta Thika Tenancy Act, 1949 and khatal lands held under a lease shall vest and save as aforesaid no other land and structure vest under the impugned Act.

(c) Sub-sections (2) and (3) of Section 8 of the impugned Act and Rule 5, Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 are ultra vires the Constitution.

(d) Rule 3(b) of the Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 excepting the following portion "every thika tenant or tenant shall pay to the Controller annual revenue being not less than what he was paying to the landlord before the coming into force of the Act" Rules 3(h), 3(0 and 3(j) of the said rules are ultra vires.

(e) Section 19 of the impugned Act in so far as it purports to abate any pending appeal preferred by a thika tenant against a decree for eviction of thika tenant under the Calcutta Thika Tenancy Act, 1949 and any execution proceeding for eviction of a thika tenant against whom a decree for eviction had been passed under the Calcutta Thika Tenancy Act, 1949 before the enforcement of the impugned Act is illegal and ultra vires.

(f) Section 6(2) of the impugned Act excepting the proviso thereunder and Sections 26 and 27 of the impugned Act are declared ultra vires.

57. Let these writ cases heard analogously before this Special Division Bench and other writ cases involving similar contentions challenging the vires and/or the applicability of the impugned Act in respect of the lands and tenancies in question be placed before the appropriate Bench taking writ matters for final disposal on the basis of decision made by the Special Bench on scrutiny of facts involved in such cases. There will be no order as to costs.

58. We note here with appreciation the very valuable assistance rendered by Mr. Samarditya Pal, the learned counsel appearing in the first case and thereby advancing the major part of the arguments for the petitioners in other cases and Mr. Sadhan Gupta, the learned Additional Advocate General who has covered the

major part of the arguments advanced by the learned counsel for the respondents.

59. After the aforesaid judgment was delivered, the learned counsel appearing for the State has made an oral prayer for leave to appeal to the Hon''ble Supreme Court. Although such prayer has been opposed by the learned counsel for the petitioners, we grant such leave as it appears to us that the questions involved in this decision are of great public importance and an authoritative decision of the Hon''ble Supreme Court is desirable. In our view, it is a fit case for grant of such leave under Article 134 of the Constitution.

60. A prayer has also been made on behalf of the State for stay of the operation of this judgment for three months. Such prayer has been strenuously opposed by the learned counsel appearing for the petitioners.

61. In the facts of the case we, however, grant stay of the operation of the order for six weeks on condition that the status quo as was prevailing on the date of passing the judgment will continue for six weeks.

62. Let the certified copy of this judgment be delivered to the parties expeditiously if any application for urgent certified copy is made.

Bhagavati Prosad Banerjee, J.

63. I agree.

Monoranjan Mallick, J.

64. I agree.