
(1990) 11 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 44 of 1979(R)

Mahabir Prasad Jalan and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Citation : (1990) 11 PAT CK 0026

Judgement

1. In this writ application, the petitioners have, inter alia, prayed for a declaration that the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962) as amended by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Ordinance, 1975 (hereinafter called the "Ceiling Act") and particularly the provisions for payment of compensation are ultra vires the Constitution of India, illegal, void and of no effect and the same should be set aside.

2. The facts of the matter lie in a very narrow compass. By reason of two registered indentures dated 17th November, 1961, the then trustees of a trust known as "Subarn-rekha Agricultural Estates" acquired two Tea Estates commonly known as "Palandu Tea Estate" and "Sabaya Tea Estate" together with tea bushes, plantations, standing trees, buildings factory and other properties situate in different villages in the district of Ranchi.

3. According to the petitioners, the tea bushes and the standing trees are very valuable and the petitioners process the tea leaves at its factory for manufacturing and processing. The petitioners allegedly used to produce green tea and export the same.

4. Admittedly, the aforementioned two tea estates in question comprised of lands measuring 1922.79 acres. According to the petitioners out of the aforementioned area, 900 acres of land were under the tea cultivation and there were about 7,96,096 tea bushes or shrubs in the said estates.

5. By reason of a notification dated 12-12-1974 issued u/s 10(2) of the Ceiling Act by the respondent No. 2 about 1642.19 acres of the said lands were purported to have been declared surplus.

The petitioners filed an objection to the said draft statement and by an order dated 1-1-1974 passed by respondent No. 2, the said objection of the petitioners was rejected.

6. The petitioners preferred an appeal before the Commissioner, South Chotanagpur Division at Ranchi against the said order which was marked as Land ceiling Appeal No. 89 of 1974 and by an order dated 3rd July, 1975, the said appeal was dismissed. The petitioners, thereafter preferred a revision application against the appellate order which was registered as Ranchi Land Ceiling Revision No. 344 of 1975, and by an order dated 22-1-1975 the said application was also dismissed.

7. Thereafter, an application under Articles 226 and 227 of the Constitution of India was filed in this Court, which was marked as C.W.J.C. No. 2625 of 1975. During pendency of the said C.W.J.C. No. 2625 of 1975, on 27th December, 1975 final notification u/s 15(1) of the Ceiling Act was issued, which has been marked as Annexure 3 to this writ application.

8. By order dated 2nd August, 1975, passed in C.W.J.C. No. 2625 of 1975, this Court held that the authorities did not apply their mind to the question as to whether 9.06 acres of land on which the tea factory stood is "land" as defined in Section 2(f) of the Ceiling Act and that required reconsideration. The writ petition was allowed with regard to that land. With regard to the rest of the land, the writ petition was permitted to be withdrawn to enable the petitioners to pursue the representation that they had filed in which they had stated that the tea industry of the petitioners earned foreign exchange and it would close down if only 41 acres of land are allowed to remain with the petitioners. Copy of that order has been annexed as Annexure 2 to the writ petition.

9. By letter dated 18-3-1978, copy of which is Annexure 4 to the writ petition, respondent No. 5 informed the petitioners that if they wanted to purchase the tea leaves, they would appear before him. On 16-2-1978 the petitioners applied u/s 23 of the Ceiling Act before respondent No. 2 in which they demanded compensation of rupees eightyseven thousand and odd being the value of the tea bushes and said trees standing on the land. Having got no relief, the petitioners filed this present writ petition, namely, C.W.J.C. No. 44 of 1979.

10. Main grievance in the writ petition is that as there is no provision under the Ceiling Act for payment of compensation for tea bushes, provision relating to payment of compensation is ultra vires the Constitution of India. The writ petition was dismissed on 16-2-1979. The petitioners thereafter filed civil appeal before the Supreme Court which was registered as Civil Appeal No. 3250 of 1979. The Supreme Court allowed the said appeal and directed this Court to dispose of this writ petition on merit. In compliance of the order of the Supreme Court, this writ

petition was admitted for hearing on 21-1-1990.

11. The petitioners filed an application on 15-3-1990 for amendment of the writ petition. In the application for amendment, they have stated that the tea garden with factory for manufacturing tea is an industry and was outside the ambit of the Ceiling Act. They challenged the validity of Annexure 3, notification u/s 15 of the Ceiling Act. This application for amendment was allowed on 19-3-1990. It may be noticed that during the pendency of the appeal in the Supreme Court, the State of Bihar took possession of the land which was declared surplus in the hands of the petitioners as having vested under the Ceiling Act in the State.

12. A counter-affidavit has been filed on behalf of the respondents wherein, inter alia, it has been contended that the Ceiling Act is not ultra vires the Constitution. There is no provision for payment of compensation in respect of the tea bushes and as such no compensation is payable to the petitioners on that account. The lease which was granted in favour of the petitioners in the year 1942 for a period of thirty years has lapsed by efflux of time and said lease having not been renewed, the petitioners are not entitled to any relief in relation to the said lands described in Schedule B of the writ petition, inasmuch as they have no substituting right, title and interest therein. No objection was filed by the petitioners even after receipt of the draft notification dated 23-5-1974 and as despite grant of sufficient opportunities the petitioners did not adduce any evidence in support of their objection, surplus land were acquired for public purpose by the aforementioned order dated 27-12-1975. The writ petition is barred under the principles of res judicata in view of the aforementioned order passed by this Court in C.W.J.C. No. 2625 of 1975 (Annexure 2).

13. In reply to the counter-affidavit, the petitioners have contended that tea factory and the tea garden comprised within a tea estate are inseparable. The bushes are really trees and if they are not pruned they grow taller just like any other trees. The width of the tea bushes are about ten inches and they have substantial value of timber. The State Government has paid compensation at the rate of Rs. 10/- per tea bush grown on the lands of the petitioners as would appear from award dated 11th November, 1972, passed by the Additional Subordinate Judge, Ranchi, in Land Acquisition Case No. 7 of 1968 and other analogous cases which is Annexure 8 to the writ petition.

14. With regard to expiry of lease in respect of the lands described in Schedule B of the writ petition, it has been contended on behalf of the petitioners that applications for renewal of the said leases were made and the petitioners had a legal right to get their leases renewed.

15. Mr. Mitra, learned Counsel appearing on behalf of the petitioners contended that in view of the fact that the Parliament had enacted Tea Act, 1953 which contains a declaration in Section 2 thereof as required under Entry 52, List I of the VIIth Schedule of the Constitution of India, the entire field of legislation in respect of tea industry is occupied and the State Legislature had no legislative

competence to make any enactment in respect thereof. In this connection he relied on various provisions of the Tea Act and the object and reasons thereof. He strongly relied on the decisions of the Supreme Court in *State of Orissa Vs. M.A. Tulloch and Co.*, ; *I.T.C. Limited v. State of Karnataka* 1985 Suppl SCC 476; and unreported decision of the Supreme Court in *Bharat Coaking Coal Ltd. v. The State of Bihar*, Civil Appeal No. 4521 of 1986 and other analogous cases, disposed of on 17th August, 1990. According to Mr. Mitra, a tea plantation with factory cannot be said to be "land" within the meaning of the Ceiling Act and as such it has no application to the land in question.

16. Learned Counsel further submitted that the word "industry" in the Tea Act has to be given "a wider" meaning and for the purpose of coming to the conclusion as to whether a "land" is used for agriculture purpose or industrial purpose, the dominant and principal object thereof should be taken into consideration. In this connection, learned Counsel has relied upon the decisions of the Supreme Court in *D.N. Banerji Vs. P.R. Mukherjee and Others*, ; *Harinagar Cane Farm and Others Vs. State of Bihar and Others*, ; and the *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, .

17. Mr. Mitra placing strong reliance on the provisions of Section 29(1)(b) of the Act submitted that if the Ceiling Act applied, in terms thereof it was obligatory on the part of the respondents to grant exemption to the petitioners in respect of their tea gardens as it was being used for industrial purpose.

18. Learned Counsel contended that in any event the stand of the respondents to the effect that no compensation is payable in respect of tea bushes is not correct as Part V of the Schedule appended to the said Ceiling Act provide for compensation for acquisition of trees. He, in this connection, relied on paragraph 4 of the rejoinder of the petitioners to the counter-affidavit filed by the State for the purpose of showing that tea bushes are really tea trees and they have some timber value. Learned Counsel also brought to our notice that the Land Acquisition Judge in Land Acquisition Case No. 89 of 1974 has in fact granted compensation for tea bushes at the rate of Rs. 10/- per bush.

19. Learned Advocate General submitted that this writ petition is barred under the principles of constructive res judicata inasmuch as the points raised in it could have been and ought to have been raised in C.W.J.C. No. 2625 of 1975. It was further submitted that in view of the fact that the petitioners' contentions in the said writ petition were negatived, this writ petition is barred by res judicata.

20. Learned Advocate General urged that the very fact that the petitioners relied on Section 29 of the Ceiling Act goes to show that it applies in respect of the tea industry also as otherwise question of grant of exemption would not have arisen. According to him, from Section 29(2) it would be evident that the legislature intended to bring within its fold not only agriculture lands but also factories.

21. About applicability of the Tea Act, learned Advocate General submitted that planation of tea also conies within the purview of the agricultural activities and

thus the same is covered by Entry 18 read with Entry 14 of the List II of VII Schedule of the Constitution of India. He urged that in any event the purpose of the Tea Act and of the Ceiling Act are absolutely different and as such the State Legislature had legislative competence to enact the Ceiling Act. He in this connection has strongly relied upon a decision of the Supreme Court in *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, .

22. According to the learned Advocate General, as there is no pleading in the writ petition about the fact that no compensation was paid for the tea bushes, this question cannot be raised.

23. In view of the rival contentions of the parties, as noticed hereinbefore, the following questions arise for consideration in this writ petition:

(I) Whether in view of the Tea Act, 1953 which contains declaration in Section 2 in terms of Entry 52, List I of the VIIth Schedule to Constitution of India, the Ceiling Act applies to the land in question which is used for tea plantation.

(II) If it is held that notwithstanding the Tea Act, the Ceiling Act applies to tea plantation, whether the State of Bihar was required to pass an order u/s 29(1)(f)(vi) of the Act exempting the land covered by tea garden.

(III) If the Ceiling Act applies, whether the petitioners are entitled to compensation in respect of tea bushes.

(IV) Whether the writ petition is barred under the principles of *res judicata*.

Re-Question No. (I):

24. The Ceiling Act was enacted to provide for fixation of ceiling, restriction of sub-letting and resumption by certain raiyats, for personal cultivation of land, acquisitions of status of raiyat by certain under-raiyats, and acquisition of surplus land by the State in the State of Bihar and matters connected therewith, as would be evident from the Preamble thereof. Except Section 28 thereof, it has been specified in the IXth Schedule to the Constitution of India in terms of Article 31B thereof.

25. Section 2(f) defines land as follows:

" "Land" means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, Kharhar or pasturage or the homestead of a land-holder."

26. Section 2(g) defines land holder to mean:

" "Land holder" means a person who holds land as a raiyat or as an under raiyat and includes a mortgagee of land with possession,"

27. Section 3 of the Ceiling Act begins with a non-obstante clause to the effect that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any other law, custom, usage or agreement for the time

being in force or in any decree or order of any Court.

28. Section 4 provides for fixation of ceiling area of land depending upon the quality thereof.

Section 5 provides that except as otherwise provided in the said Act it shall not be lawful for any family to hold land in excess of the Ceiling Area.

The word "family" has been defined in Section 2(e) to mean a person his/her spouses and minor children and for that purpose includes any Company, institution, trust, association or body of individuals, whether incorporated or not.

29. Sections 6 to II provide for the manner in which the notices to be issued to the land holders, collection of information, penalty for non-submission of return, option for family to mortgage its ceiling areas, preparation of draft statements and final publication of the draft statement.

Section 15 provides for acquisition of surplus land. Section 23 provides for determination of compensation for land acquired by the State Government and in terms thereof, which has to be paid according to the rates specified in the Schedule appended to the Act.

30. Section 27 provides the manner in which the surplus land acquired under the Ceiling Act is to be disposed of. The said provision, however, is subject to the other provisions of that Act.

31. Section 29 provides for exemptions. Section 29(1)(b)(vi) reads as follows :-

"29(1)(b) : The provisions of Section 5 and Section 28 shall not apply to (vi) land required in connection with any other agricultural or industrial purpose, to the extent approved by Government so long as they continue as such."

Section 45 of the Act is Rule making power of the State Government.

32. The Tea Act, 1953, was enacted for the purpose of providing for control by the Union of tea industry, cultivation of tea and of the export of tea from India and for that purpose to establish a Tea Board as is evident from the Preamble thereof.

It is not the case of the petitioners that the Ceiling Act or any of its provision violates Part III of the Constitution.

33. From a perusal of the statement of objects and reasons of the Tea Act, it appears that the same Act was, inter alia, enacted for the purpose of combining the provisions of the two enactments which were then existing, namely, the India Tea Control Act which provided for the control of export of tea and control of extension of the cultivation of the Tea and also the Central Tea Act, 1949 which was enacted for the development of the tea industry under the control of the Central Government.

34. The Tea Act, therefore, sought to codify the subject-matter covered by the

Indian Tea Control Act, as also Central Tea Act, 1949.

35. Section 2 of the Tea Act contains a declaration to the effect that it is expedient in the public interest that the Union should take under its control the tea industry.

36. Tea has been defined in Section 3(n) of the Act as follows:

"Tea" means the plant *Camellia Sinensis*(I) O. Kuntze as well as all varieties of the product known commercially as tea made from the leaves of the Plant *Camellia Sinensis*(L)O. Kuntze including green tea."

37. Chapter II of the Tea Act provides for establishment of the Board. The functions of the said Board have been specified in Section 10 thereof which includes the regulation of the production and extension of cultivation of tea.

Chapter III of the said Act provides for the control over the extension of tea cultivation. Section 12 provides for method of control of extension of tea cultivation and inter alia provides for obtaining permission to plant tea upon any land if it is not planted thereupon already.

38. Section 13 provides for limitation to the extension of the Cultivation. Section 14 provides for grant of permission to plant tea. Section 15 provides for establishment of tea nurseries in certain cases.

39. Chapter IV provides for control over the export of tea and tea seed.

Chapter V provides for finance, accounts and audit in respect of tea industry.

Chapter VI provides for control by the Central Government of price and distribution of tea and tea waste.

40. Section 31 of the said Act provides for general control over acts and proceedings of the Board. Section 33 provides for the licensing of brokers, tea manufacturers etc.

41. Mr. Mitra submitted that in view of declaration made by the Parliament as contained in Section 2 of the Tea Act, 1953, the power of the State legislature to enact in any matter in respect of tea is denuded.

42. As noticed hereinbefore, the learned counsel has relied upon *State of Orissa Vs. M.A. Tulloch and Co., , I.T.C. Ltd. v. The State of Karnataka* 1985 (Suppl) SCC 476 and unreported decision of the Supreme Court in *Bharat Coking Coal Ltd.*,¹ case (supra) All the decisions relied on by Mr. Mitra are in relation to Entry No. 54 of List 1 of the VII Schedule to the Constitution, wherein it has been held that in view of the declaration made in Section 2 of the Mines and Minerals State Government to make any enactment in relation to Mines, and Mineral or to levy any tax thereupon has been taken away.

In *Bharat Coking Coal Ltd.* (supra) the Supreme Court has also held that once the field of Mines and Minerals is covered by enactment of Mines and Minerals

(Regulation and Development) Act, 1957, no entrenchment in the said field by the State Legislature is permissible, irrespective of the fact as to whether any rule has been made thereunder or any step has been taken by the Central Government for regulation of Mines and Minerals Development or not.

43. On the other hand, the learned Advocate General, as noticed hereinbefore, submitted that the provisions of the Ceiling Act provides for acquisition of surplus land to give effect to a public policy of the State, namely, agrarian reforms.

44. It was further contended by the learned Advocate General that in fact, there is no conflict between the Ceiling Act and Tea Act, 1953.

45. In the instant case whereas the contention raised on behalf of the petitioners is that legislature of Bihar has no legislative competence to cover a tea industry in view of enactment of the Tea Act, 1953 which contains a declaration as is required in Entry 52 List I of the Constitution of India, the contention raised on behalf of the respondents is that the said Act is covered by Entry 18 of List II read with Entry 42 of List III of the VII Schedule of the Constitution of India.

46. It is well known that the entries in the list are designed to define and delimit the respective area of legislative competence of the Union and the State legislature. It is settled principles of law that in the event there appears some conflict between entries in different lists, the same has to be read together without giving a narrow meaning to any of them. The powers of the Union and the State Legislature are both expressed in precise and definite terms. There can be no reason in such a case of giving a broader interpretation to one power than to other.

This interpretation has been repeatedly reiterated by the Supreme Court. Reference in this connection may be made to Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, and Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, .

When one Entry is made, "subject to" another Entry, all that it means is that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate Legislature.

47. In Tulloch and B.C.C.L. (supra), it has categorically been held by the Supreme Court that in view of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, the power of the State Government to make any legislation in relation thereto is denuded. Similar is the decision of the Supreme Court in India Cements Ltd. Vs. Collector of Central Excise, . However, Entry 54 and Entry 52 of that List stand on different footings. In terms of Entry 54 of List I of the VII Schedule of the Constitution of India, if a declaration is made by the Parliament by law in relation to regulation of mines and minerals development, the power of the State Legislature to make any legislation in relation thereto is denuded. Whereas in terms of Entry 52 of List I of the VII

Schedule of the Constitution of India, where the control over the industries in respect whereof the Parliament by law declares it to be expedient in public interest, power to make legislation by the State Legislature in respect of control over that industry is denuded.

48. However, it must be borne in mind that even if a Legislation contains a declaration in terms of Entry 52 of List I of VII Schedule of the Constitution of India, the Parliament does not thereby get within its control the field of legislation, which is the subject matter of the State List.

49. Entry 24 of the State List is subject to Entry 52 of the Union List, but the legislative competence of the State in respect of the "land" as contained in Entry 18 or in relation to "agriculture" as contained in Entry 14, both in State List, has neither been taken away nor can be taken away under the declaration made in Section 2 of the Tea Act, 1953 or otherwise.

It is now well settled that even after such a declaration by the Parliament, the State Legislature does not cease to have the power conferred by an independent Entry which had no proximate connection with the control of industry e.g. power relating to land reforms etc., to acquire or requisition property for the industry under Entry 42 of List III or to regulate production, supply and distribution of any industrial project as contemplated under Entry 33 of List III.

Reference in this connection may be made to the *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, ; *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, which has been followed in *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, and the *State of Uttar Pradesh and Others Vs. Synthetics and Chemicals Ltd. and Others*, . In terms of Entry 52 of List I, the Parliament only retains "control" over such industry in respect whereof a declaration has been made.

Entry No. 18 is not restricted to agricultural land but also includes all species of land, including non-agricultural land. Reference in this connection may be made to *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, . So far acquisition of land is concerned, the same is covered by Entry 42 of List III of the Constitution of India. The Supreme Court in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, held that *Bombay Tenancy and Agricultural Lands (Amendment) Act* is valid, inter alia, on the ground that the said Act promotes agrarian reforms and covered by Entry 18 of List II of the VII Schedule of the Constitution.

50. The question, therefore, is whether by the provisions of the Ceiling Act, the field relating to control of declared industry, viz. tea industry, is entrenched or not.

51. The answer to the aforementioned question, in our opinion, must be rendered in the negative. The Ceiling Act seeks to achieve the objects as mentioned in the preamble thereof, and its objects thus have nothing to do with

the control of a declared industry.

52. In view of the definition of "land" as contained in Section 2(f) of the Ceiling Act, it is evident that cultivation of tea comes within the purview of agricultural activity. Further, the Ceiling Act provides for acquisition of such lands which have been declared surplus and thus squarely falls within the purview of Entry 42 of the Concurrent List. It is not the case of the petitioners that Parliament has already legislated on this subject.

53. Mr. Mitra, however, relied upon a Division Bench decision of the Allahabad High Court in *Maharaj Prashad Jain Vs. Commissioner of Income Tax*, , for the proposition that plantation of tea is not an agricultural operation.

In that case, the Allahabad High Court was considering the word "agriculture" for purpose of Income Tax Act. The law laid down in *Maharaja Prasad Jain (supra)* has no application to this case. In this case, the petitioners themselves in paragraph 8 of the writ petition admitted that they had planted tea bushes in the said estates and about 7,96,069 tea bushes as shrubs were under cultivation.

54. Further, there cannot be any doubt that plantation and growing of tea is an agricultural activity and the land which is capable of producing any agricultural products would be agricultural land and thus the same would come within the meaning of the provisions of Section 2(f) of the said Act. The decisions of this Court in *Mahammad Yasin v. Abdul Rauf*, 1967 BLJR 49 and *Mahabir Prasad and Others Vs. The State of Bihar and Others*, , cannot be said to have any application whatsoever.

54A. At this juncture, another submission of Mr. Mitra may be noted. The learned counsel submitted that produce of the tea bushes cannot be consumed by human beings unless the same are processed. According to Mr. Mitra, therefore, the said Act cannot be said to have any application whatsoever in relation to plantation of growing of tea.

This argument cannot be accepted for the simple reason that there are various agricultural produces which by themselves may not be fit for human consumption unless they are processed manually or in a factory.

55. In *Kannan Devan (supra)* the provisions of *Kannon Devan Hills (Resumption of Lands) Act*, 1977 enacted by the State of Kerala was considered by the Supreme Court. By reason of the provisions of that Act, agricultural lands which were not the subject-matter of plantation of tea etc., by the petitioner of that case were sought to be acquired by the State of Kerala under that Act. The question which fell for consideration before the Supreme Court was as to whether the said Act is ultra vires the power of State Legislature in view of the Tea Act, 1953.

56. In that case, the Supreme Court clearly held that as the impugned Act, i.e. Kerala Act, in pith and substance was a law dealing with Entry 18 of List II and Entry 42 of List III, the State of Kerala had the legislative competence to enact

the same despite enactment of Tea Act, 1953. The Supreme Court referred to *Paresh Chandra Chatterjee Vs. The State of Assam and Another*, in which case the issue was in view of Tea Act, 1953, whether Assam Land (Requisition and Acquisition) Act, 1948 applied to the tea estate and quoted from Chatterjee's case the following AIR 1962 SC 169

"It is, therefore, manifest that the Tea Act is "mainly concerned with the development of the tea industry, and it has nothing to do with the requisition or acquisition of lands, though the said lands may form part of a tea estate or used for purposes incidental to the tea industry. Indeed, Section 15(1)(b)-of the Tea Act provides for the contingency of a part of a land on which tea is planted being compulsorily acquired under the provisions of the Land Acquisition Act, 1894 (Act I of 1894) or by any other law for the time being in force and no longer carries tea. In such an event, the said section authorises the owner of the tea estate in which such land is situate to apply to the Board for permission to plant tea on land not planted with tea. The Tea Act, therefore, not only does not expressly prohibited the acquisition of any land, but also in express terms provided for the replacement of the area acquired by other land for the purpose of tea plantation."

"A comparative study of both the Acts make it clear that the two Acts deal with different matters and were passed for different purposes."

57. In *Kannan Devan* (supra) Supreme Court observed:

"It seems to us clear that the State has legislative competence to legislate on Entry 18, List II, and Entry 42, List III. This power cannot be denied on the ground that it has some effect on an industry controlled under Entry 52, List I. Effect is not the same thing as subject-matter. If a State Act, otherwise valid, has effect on a matter in List I, it does not cease to be a legislation with respect to an entry in List II or List III"

The Supreme Court also observed:

"The fact that the plantation is run as an integrated unit was strongly relied on but this cannot impinge upon and take away the legislative power of the State in respect of List II, Entry 18".

In view of the Fact that the Ceiling Act is clearly referable to Entry 18, List II and Entry 42 of List III, *I.T.C. Ltd.*, (supra) in which the effect of Parliamentary law made under Entry 52, List I on State law has no application to his case.

58. The submission of Mr. Mitra that the word "industry" in Entry 52 of List I must be given wider interpretation to include tea plantation or tea estate must be rejected in view of the judgment of the Supreme Court in *Prakash Chandra Chatterjee* (supra) and *Kanan Devon* (supra). It is, therefore, not necessary to discuss the cases relied by Mr. Mitra dealing with the word "industry" in the Industrial Disputes Act, 1947.

59. Section 29 of the Ceiling Act upon which as noticed hereinbefore, reliance has been placed by Mr. Mitra itself goes to show that if any agricultural operation is being carried out even as a part of an industry, the same provides for grant of exemption by the State of Bihar. Section 29 of the Ceiling Act therefore vests the State with a power to grant exemption from purview of Ss. 5 and 28 such lands which may be found necessary to be retained by the "landholder" for the purpose of running an industry.

60. For all the reasons aforesaid, it must be held that the Ceiling Act applies to the land covered by the Tea plantation of the petitioners. This answers question No. (i).

61. Mr. Mitra submitted that exemption in terms of Section 29 of the Ceiling Act is automatic and the State is merely to approve the extent of the land.

62. As noticed hereinbefore, in view of Section 29(1)(b)(vi) of the Ceiling Act, Sections 5 and 28 shall not apply in respect of the land required in connection with any non-agricultural or industrial purposes to the extent approved by the Government, so long as they continue as such.

63. In terms of Section 5 of the Ceiling Act, a landholder is entitled to retain with him the lands to the extent prescribed therein, which in turn depends upon the nature of the land.

In the instant case, as would be evident from the notification as contained in Anne-xure 4 to the counter-affidavit filed on behalf of the State that a notification of exemption to the extent of 9.06 acres of land was issued. This area comprises the factory premises belonging to the petitioners.

64. Apart from the aforementioned land, the petitioners were permitted to retain 41 acres of land in terms of the provisions of Section 5 of the Ceiling Act.

65. If, any further land was required for the purpose of plantation of tea so that the same may be used for industrial purpose, it was for the petitioners to make a representation in this regard and that was so observed in C.W.J.C. No. 2625 of 1975.

Power to grant exemption in terms of Clauses (a) and (b) of Sub-section (1) of Section 29 is imperative, whereas power to grant exemption in terms of the Sub-section (2) is optional.

66. Mr. Mitra, when questioned, very fairly stated that there is nothing on record to show that the petitioners have made any such representation for grant of exemption of any land which, according to the State, vested in the State of Bihar in terms of Section 15(1) of the Ceiling Act.

If it is not possible to run an industry by retaining such lands as may be prescribed u/s 5 and if the landholders do not file a representation for exempting the provisions of Section 5 in respect of such land which, according to them, may be necessary for running the industry, the question of applicability of Section

29(1)(b)(vi) thereof does not arise.

67. The words "to the extent approved by the Government" in Section 29(1)(b) (vi) are significant. Such extent as may be approved by the Government relate to the land, which according to the landholder, is required in connection with "other non-agricultural or industrial purposes". This provision would be applicable to such case when the State shall have to exercise its power and grant such exemption after scrutinising the materials available or may be brought on record for the purpose of ascertaining the actual necessity. It was, therefore, obligatory for the petitioners to file a representation before the State Government in order to enable it to ascertain the land required for the petitioners' tea industry and to exempt it from the provisions of Sections 5 and 28.

68. The very fact that a provision for exemption has been made in respect of lands covered by non-agricultural and industrial purpose go to show that a land as defined in Section 2(f) would come within the purview of the Ceiling Act, even if the agricultural activity of landholder is connected with his industrial activities and the produce of the agricultural operations are used for processing the same in a factory.

69. It is true as has been contended by Mr. Mitra that such a huge surplus land may not be possible to be disposed of in the manner as provided u/s 27 of the Ceiling Act.

From a plain reading of Section 27 it would be evident that the same is subject to the other provisions of the Ceiling Act. Further the settlement, which may be made to the persons mentioned in Section 27 of the said Act is optional and not imperative,

In terms of Sub-section (2a) of Section 27, the State Government may utilise the said lands for the purposes mentioned therein which include public purpose, which need not necessarily be agricultural purpose.

70. In answer to question No. (II) it must be held that in the absence of any representation made by the petitioners, the State Government was not required to pass any order u/s 29(1)(b)(vi) of the Ceiling Act.

Re-Quest on No. (III).

71. The Schedule to the Ceiling Act provides rate of compensation payable for land and tree acquired. Part V of the said Schedule provides for compensation for fruit-bearing trees as also for trees which have timber value.

72. The petitioners in paragraph 4 of the reply of the counter-affidavit have stated thus:

"The tea bushes are trees. If the tea bushes are not pruned they will grow taller like any other tree. Tea bushes are really tree and by regular pruning the tea bushes are not allowed to grow beyond a particular height for the convenience of plucking of green leaves. Otherwise a tea tree bearing green leaves can grow up

to 12 feet or even higher. Tea bushes are really trees bearing green leaves suitable manufacture of tea. Such trees which are commonly called tea bushes contain substantial qualities of timber. The width of the bottom of tea bushes are more than 10 in diameter and have substantial value as timber. In respect of acquisition of tea bushes of another portion of Sabya Tea Estate, the Government of Bihar has paid compensation at the rate of Rs. 10/- per tea bush having regard to the market value as in the year 1972. The order of the appropriate authority of the Govt. of Bihar assessed the compensation value of tea bushes at Rs. 5.56 per tea bush which was assessed by the learned District Judge of Ranchi at Rs. 10/- per tea bush."

73. In *Encyclopaedia Britannica* 15th Edition (Vol. 18) at page 687 in respect of tree it has been stated as follows:

"Although the concept of a tree as a growth form is useful and generally well understood, it is not possible to provide a precisely delimiting definition of a tree. There is an imperceptible merging of plants that obviously are trees into shrubs and of weedy plant into herbaceous plants. To qualify as a tree a plant must be perennial (i.e. a plant that renews its growth each year); in addition trees usually have a single self-supporting trunk that contains woody tissues. The trunk generally is dominant for some distance above the ground and commonly produces secondary limbs, called branches; in some species, however, the trunk divides at a low, sometimes even at ground level into two or more trunks. Most palms have no branches. Although height is often considered a factor in defining trees-minimum limits of 15 or 20 feet (5 to 7 metres) being most commonly accepted-limits are an arbitrary measure of convenience; weedy plants, like all others are greatly influenced by environment, and the same species, and even specimens propagated by cuttings or some other means from the same stock of one species, may vary tremendously in size depending upon where they grow and the treatment they receive. Pines, spruces, birches and many other trees, although reduced in size - in some cases to be more than a few inches tall - at the northern most limits and the highest altitudes of their occurrence, may still have single woody trunks. Specimens of many species grown under adverse conditions of soil, moisture, exposure to wind, and other environmental factors may be similarly dwarfed. The Japanese, by manipulating natural factors affect growth and by skilful pruning, practice the art of bonsai, in which a species that weedy by forest trees in nature are so dwarfed that they never exceed a few inches to three feet or so in height; such trees developed the proportions and appearance of their fully developed counterpart however."

In *Maharaj Prashad Jain Vs. Commissioner of Income Tax*, a Division Bench of the Allahabad High Court also made quotations from *Encyclopaedia Britannica* in respect of "Tea Plant" thus AIR 1967 All 14

"the tea plant is an ever green shrub which in its natural state grows to a height of 50-30 feet but the tea planter keeps it pruned down to height of 3-5 feet. It usually is grown from seed in nursery beds. On large tea estates the young

plants are transplanted to the prepared tea field when they are six to eight inches in height, usually in six months" time.... by the end of the third year they are ready for plucking.... weeding. Cultivation between the rows and pruning goes on regularly at different periods for 25-50 years, the average life of a tea bush."

It is, therefore, clear that the petitioners have made out a case that tea bushes are really tea trees and that the tea bushes have some timber value.

74. It is also evident from the judgment of the 1st Additional Subordinate Judge passed in land acquisition case u/s 18 of the Land Acquisition Act, 1894, that compensation was paid to the trust @ Rs. 10/- per tea bush.

75. The petitioners in the writ petition clearly stated that no compensation has been paid to them in respect of tea bushes on the acquired land. In the counter-affidavit it has been contended on behalf of the respondents that in view of the provisions of the Ceiling Act, no such compensation is payable, In this view of the matter, the contention of the learned Advocate-General to the effect that there is no pleading on the record about the non-payment of compensation in respect of tea bushes cannot be accepted.

76. The Ceiling Act itself provides for payment of compensation in respect of trees. This Court in exercise of writ jurisdiction although cannot determine the amount of compensation payable to the petitioners for acquisition of tea bushes, it can certainly direct the State of Bihar to perform its statutory obligation for paying compensation in terms of the provisions of the Ceiling Act.

77. The statements about tea bushes made by petitioners in their reply to the counter-affidavit have not been controverted. This aspect of the matter was highlighted even before the Supreme Court on behalf of the petitioners and one of the reasons of passing an order of remand of this case by the Supreme Court was non-payment of compensation to the petitioners in respect of tea bushes. It was incumbent upon the respondents to state in no uncertain terms that tea bushes are not trees. But as indicated hereinbefore except making a bald statement to the effect that no compensation is payable in respect of tea bushes as there is no provision therefor- in the said Act, no other statements have been made in the counter-affidavit.

78. From a perusal of Part V of the Schedule of the Ceiling Act, it is evident that the State Legislature intended to pay compensation in respect of the trees of all sorts. The object of the said Act, therefore, is to recompense the landholder for acquisition of tree on surplus land. Any other interpretation of the said schedule would violate the object of the Act.

79. Taking all these aspects of the matter, it must be held that the petitioners are entitled to compensation in respect of tea bushes which are trees and which were on the land on the date of acquisition.

Re-Question No. (IV).

80. The question as to whether the decision of this Court in C.W.J.C. No. 2625 of 1975 as contained in Annexure 2 to the writ petition shall operate as res judicata does not arise in this case. In that writ petition, the petitioners questioned the correctness of the notification issued u/s 11(1) of Ceiling Act. However, as noticed hereinbefore, during the pendency of the said writ petition, a notification u/s 15(1) of the Ceiling Act was also issued. It is not clear from the pleadings as to whether the said notification which was also issued u/s 15(1) was also challenged by filing an application for amendment of the writ petition or not. However, for the purpose of disposal of this writ petition, it will be presumed that it was not done.

81. From a perusal of Annexure 2 to the writ petition, it would appear that that writ petition was allowed in part so far as lands covered by the Factory was concerned and was permitted to be withdrawn in respect of the rest, to enable the petitioners to file representation.

To the order allowing withdrawal of that writ petition, the principles of res judicata do not apply. This writ petition is not barred by the principles of res judicata.

82. In view of the findings aforementioned, we have considered it not necessary to decide the effect of expiry of the period of lease in respect of the lands mentioned in Schedule V of the writ petition.

83. Before parting with this case, however, it may be mentioned that it appears that the petitioners have been holding a tea estate Which was the only one of its kind in the State of Bihar and which used to produce green tea meant for export. The statements mentioned in the writ petition to the aforementioned effect have not specifically been denied or disputed by the respondent in the counter-affidavit. The State being a welfare State should consider the fact that by applying the provisions of the Act, an industry does not meet its death; particularly when there is provision in the Ceiling Act itself for granting exemption of such land from the purview of Section 5 thereof so as to enable the landholder to run the industry.

84. It is true that a final notification has been issued u/s 15(1) of the Ceiling Act as far back as in the year 1975. However, there is nothing on records to show that the lands in question have been distributed in terms of Section 27 of the Ceiling Act. If the said land or any part of the same have not yet been distributed and if the said land is capable of being planted with tea bushes, we are sure that if the petitioners file a representation for grant of exemption from the provisions of Sections 5 and 28 of the Act in terms of Section 29(1)(b)(vi) thereof, the State shall duly consider the same so that, if possible, a dead industry may be revived resulting- in employment or re-employment of substantial number of persons.

85. In the result, this writ petition is allowed in respect of question No. III mentioned hereinbefore. In the facts and circumstances of this case, there will be no order as to costs.