(1995) 08 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : CWP No. 127 of 1995 & Civil W.P. No. 127 of 1995

Mahendra Pal APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 09-08-1995

Acts Referred:

Constitution (Forty-Fourth Amendment) Act, 1978 — Section 4
Constitution of India, 1950 — Article 14, 19, 19(1), 2, 21
Forest Act, 1927 — Section 28, 29, 31, 79, 80, 80
Himachal Pradesh Kutlehar Forest (Acquisition of Management) (Amendment) Act, 1994 — Section 5
Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 — Section 4, 44(3), 44(4), 5, 6
Himachal Pradesh Land Revenue Act, 1954 — Section 4(5)
Punjab Resumption of Jagirs Act, 1957 — Section 2(1), 3(1), 4, 4(1)

Citation : (1995) 3 ILR HP 1984

Hon'ble Judges : S.N. Phukan, C.J;Bhawani Singh, J

Bench : Division Bench

Advocate : D.D. Thakur, N.N. Bhatt, Sharan Sethi and A.K. Goel, M.S. Guleria, Deputy Advocate General, for Respondent Nos. 1 to 6 and Sureshwar Thakur, Addl. C.G.S.C. for Respondent Nos. 7 and 8, for the appearing parties; B. Dutta, Senior Advocate, M.S. Guleria, D.A.G., for Respondent Nos. 1 to 6 and Sureshwar Thakur, Addl. C.G.S.C. for Respondent Nos. 7 and 8., for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—This writ petition is off-shot of Civil Writ Petition No. 707 of 1992 and 42 of 1990 decided by the Full Bench of this Court on May 9, 1994 Mohinder Pal Vs. State of H.P. and Others, Narration of the essential facts of Writ Petition No. 707 of 1992 would be necessary to \\ understand the matter and appreciate the submissions advanced before us by the learned Counsel for the parties.

2. The petitioner claims to be the descendant of the Pal family of Kutlehar, a small principality in Kangra hills, now forms part of the State of Himachal

Pradesh from November 1, 1966. It came into existence 300-400 years ago and was ruled by his ancestors. It was divided into sixteen ''Tappas'' (chunks of land), four were Jagir ''Tappas'' and 12 Khalsa ''Tappas''. In four ''Jagir Tappas'', land revenue to the extent of Rs. 10, 000/- was assigned to his forefathers by way of ''Jagir''. In addition to these four ''Tappas'', about twenty thousand acres of land belonged to ''Bartandars'' (right-holders). It was not used for agriculture purposes. The forefathers of the petitioner had grown large number of trees over it from period before 1868 A. D. They protected and maintained these trees while ''Bartandars'' were granted certain rights - right to get timber on concessional rates for their domestic requirements, the right to graze their cattle etc. Obviously, for planting and managing these trees, substantial investments were made. The forefathers of the petitioner were dealing with these trees as proprietors of the forest and It was on account of this background that as early as 1869 during the Settlement operation of civil District of Kangra, Mr. James Lyall, Settlement Officer, made proposal through his letter No. 12, dated February 12, 1868 that the management of the forests in four ''Tappas'' termed as ''Jagir Tappas'', be granted to the Raja of Kutlehar. The Government of Punjab approved this proposal not only in respect of four ''Jagir Tappas'', but also for all the sixteen ''Tappas'' - twelve ''Khalsa Tappas''. It is contained in letter No. 49, dated January 11, 1869 and since then the predecessors of the petitioner started managing the forest subject to the conditions contained in the approval.

3. However, the Government stated (sic) laying claim to the trees grown on this land after about four decades (1915). It was resisted and Anr. round of correspondence took place between the parties. The matter was set at rest by Lt. Governor of Punjab. It is clear from letter No. 124 (Forest), dated May 25, 1916 by Hon''ble H. D. Craik, officiating Revenue Secretary of Punjab to the Junior Secretary to the Financial Commissioner of Government of Punjab. The view of the Lt. Governor of Punjab is ascertainable from out of this letter which records that:

His Honour considers that the Raja has established his claim with regard to the trees on the four jagir tappas at least to this extent that Government having divested itself of most of its rights in favour of the Raja, is no longer the absolute owner. The presnt entry in the record of rights to that effect 1s, therefore, not in strict accordance with facts.

He is accordingly pleased to direct that for the first sentence of Clause III of the record of rights the following entry should be substituted as suggested unofficially by Mr. Diak.

All trees growing in the protected forests, subject to the right of Bartandars and to the other conditions and exceptions hereinafter specified, belong to Government, but have been assigned by Government to the Raja so long as he abides by the conditions of management hereunto appended.

4. So far as twelve Khalsa ''Tappas'' are concerned, Lt. Governor observed as

under:

In practice, the Raja''s position has been recognised as being the same with regard to both the Khalsa and Jagir tappas and in these circumstances Sir Michael O''Dwyer is willing to allow the entry to be made regarding the trees in the Khalsa tappas as he had approved for the trees in the Jagir tappas.

5. The petitioner submitted that the finding of the Governor depicts the precise nature of the rights which the forefathers of the petitioner had in the forest in question. It had been accepted that the forefathers of the petitioner had established their claim to the said forest and in case the then Raja had asked for the assignment of the trees in his favour, absolute right in them could have possibly been granted. The right of management of the forest was not the result of any ordinary or formal bilateral agreement but was the result of recognition of superior right of the forefathers of the petitioner in these forests. Otherwise, there could be no decision of entrusting the possession and management of these forests to the forefathers of the petitioner.

6. After the matter was finally set at rest, the Lt. Governor of Punjab, in exercise of powers vested in him under S8. 28, 29(a) and 31 of the Indian Forest Act, 1878, issued Notifications dated August 31, 1915. By the first notification u/s 28, Chapter IV of the Act was made applicable to all the waste and forest lands within the limits of '' Jagirs'' of Rajas of Guler, Dada Siba, Nadaun and Kutlehar in the Kangra District or under the management of any of the Rajas in respect of which it is declared in the record of land revenue settlement of 1910-15 that trees standing on it belong to the Government. By this notification, , certain areas specified in the statement appended thereto, were declared to have been demarcated and also demarcated protected forests.

7. By Notification u/s 29(a), Lt. Governor declared all trees to be reserved from the date of Notification in the forest declared protected by Notification No. 2839-A of the same date. And by Notification No. 2839-E of the same date, rules were framed in exercise of the powers u/s 31 of the Act, 1878. These rules contained detailed provisions relating to the matters pertaining to administration of forests including a declaration regarding the rights of ''Bartandars'', ''Khatedars'' etc. These rules also contained the details of the terms and conditions subject to which the management was assigned to the Rajas of Guler, Dada Siba, Nadaun and Kutlehar respectively.

8. Conditions No. I to VIII read as follows:

I. The management of the protected forests will continue in the hands of the Raja, subject to the recorded rights of use and to the following rules.

II. The Raja shall be bound by the general directions issued by the Forest Department.

III. The Raja shall keep a register of all leases to break up land which have been given by him. Such leases shall only be granted under the following conditions:

(1) That there are no trees standing on the land.

(2) That the land adjoins an existing main block of cultivation.

(3) That other Khewatdars and bartandars do not object.

(4) That the land has been inspected by a Forest Officer, who has satisfied himself that the above conditions have been observed. In the Khalsa villages of Taluka Kutlehar whenever the Raja refuses an application to break up land, he shall refer the case for the confirmation of the Deputy Commissioner.

IV. The Raja shall keep such registers as the Deputy Commissioner may direct in which to record the trees and bamboos granted to right-holders. In these registers the Raja shall record all trees and bamboos cut for the use of himself and his family.

V. The Raja will dispose of applications made by traders or Ors. for the purchase of trees or other forest produce, subject to the following conditions:

(a) He may sell to traders only the trees that have been marked for this purpose by the Forest Department.

(b) He shall keep the sales of bamboos within the limits in regard to number and locality fixed by the Forest Department.

(c) He shall sell trees only at the rates approved by the Forest Department.

VI. The Raja will continue to realise the grazing fees from Gaddies at the rate fixed by Government or by mutual agreement between the Raja and Gaddies, subject to the approval of Deputy Commissioner, as the case may be. The Raja shall be entitled to all such fees except as provided in Rule XIII.

VII. The Raja shall keep a register showing all receipt from the sale of timber bamboos and other forest produce, whether to Zamindars or to traders. Of this income the Raja shall:

(a) In the case of Nadaun and Guler received one-half and Government one-half.

(b) In the case of Kutlehar receive three-fourth and Government one-fourth:

NOTE: In the case of Dada Siba, the division of receipts is governed by Rule XIII.

VIII. The Raja shall continue to maintain the Establishment.

9. The petitioner stated that it would be apparent that certain provisions of the Forest Act were made applicable to the Kutlehar Forest by about the time when the Lt. Governor had finally pronounced upon the rights of the petitioner''s predecessors. Joint interest of the Government and private individual in forests was for the first time recognised by the Legislature while enacting Section 79 of the Indian Forest Act, 1878. It was a time when the Government was attempting to establish its control over forests and other State properties. Presumably, in order to settle subsisting and impending controversies, Section 79 was

incorporated in the India Forest Act, 1878. Although the decision of Lt. Governor in regard to the entries in the record of rights declare the Government as owner of the forest, the fact remains that there could be no assignment of management in favour of private individuals unless such private individuals had some rights or interest in the forest. Section 79 of the Forest Act, 1878 envisages that:

79. Management of forests the Joint property of Government and other persons

(1) If the Government and any person be jointly interested in any forest or waste-land, or in whole or any part of the produce thereof, the State Government may either-

(a) undertake the management of such forest, waste-land or produce according to such person for his interest in the same; or

(b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interest of all parties therein.

(2) When the State Government undertakes under Cl. (a) of Sub-section (1) the management of any forest, wasteland or produce, it may, by notification in the Official Gazette. declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

80. Failure to perform service for which a share in the produce of Government forests is enjoyed. - If any person be entitled to share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any . part of the forest produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the State Government that such service is no longer so performed:

Provided that no such share shall be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer-duly appointed in that behalf by the State Government.

10. These provisions form part of the Indian Forest Act, 1927 as Sections 80 and 81. They provide for the management of forest either by the Government or by a person in case they have joint interest in it. Sharing of the Income is also contemplated and it is only in case of failure to perform service by the person that the share is liable to be confiscated that too when it is established to the satisfaction of the local Government. But opportunity to establish to the contrary by the person concerned has been made part of the provisions of Section 80 before confiscation of the share is actually resorted to. The entrustment of the management of the forest contemplated by the Forest Act of 1927 was an acknowledgement of the co-ownership in the corpus of the forest and its produce

between the Government and the right-holders. The Settlement operations in the Civil District of Kangra, of which Kutlehar was a part, was started in 1868 A. D. The Settlement Officer Mr. James Lyall had taken note of the fact that the petitioner''s forefathers were in possession of the forest in question and were managing the same in their capacity as proprietors of the trees. Accordingly, a proposal was made vide letter No. 12, dated February 2, 1868 for the management of the said forest by the petitioner''s forefathers and the proposal was accordingly approved vide letter No. 49, dated January 11, 1869 by the Government of Punjab. The terms and conditions, subject to which the management was agreed upon, were as follows:

(a) Zamindars to continue to exercise their rights in enjoyment of Bartan.

(b) Grazing fee paid by Shepherds, Gujjars and herdmen to go to Raja as before according to custom and entries in settlement, and these should not be enhanced without sanction of the Government.

(c) In case of sale of timber to ZamindaRs. or other residents, at nominal prices, the whole of the income therefrom would go to the Raja and in case of sale of timber to merchants or contractors. the Raja would pay 1/4th of the income so realised into Government Treasury.

(d) In case of continued mismanagement of the forests, the Government is entitled to take management into its own hands and charge the cost of the management against 3/4th share of the income of the Raja.

11. The agreement between the parties was rather provisional since the matter had not been set at rest completely. It is clear from the fact that even during 1869-1882 when the petitioner''s predecessors-in-interest were in possession and management of the forest, their claim for higher rights continued to be enquired into. The memorandum dated July 27, 1882 of Mr. Anderson, Forest Settlement Officer, addressed to Col. W. G. Davies, ICS, Commissioner and Superintendent, Jalandhar Division to the Senior Secretary to the Financial Commissioner, Punjab throws a complete light on the rights of the petitioner''s forefathers in regard to the aforesaid forest. The following extracts from the letter of Col. W. G. Davies, ICS, Commissioner and Superintendent, Jalandhar to the Senior Secretary to the Financial Commissioner, Punjab, No. 2462, dated November 27, 1882 would substantiate the submissions:

The next question relates to the division of the income from the Kutlehar Forests between the Govt. and the Raja. To understand it properly, it is necessary to know something of the previous history of this Jagir and this I will give in a few words as possible. Chauki Kutlehar was one of the many small principalities into which these hills were formerly divided, and in 1825 was taken from the father of the present Raja by Ranjit Singh, who conferred on him a Jagir of Rs. 10, 000/- in the Hoshiarpur District. In 1868 Mr. Lyall, as Settlement Officer, in his No. 12 of 2nd February, 1868, proposed that the Jagir should be transferred to the Kangra District and that 4 out of the 16 tappas of which the Kutlehar Taluka consists should be assigned to the Raja. In sending up this recommendation he further proposed that the Government confer on the Raja its rights in the forests in the Jagir villages on certain conditions, one of which was that the whole of the sale proceeds of timber to the Zamindars should go to the Raja, while the sale proceeds of timber to merchants or contractors. the Raja should pay one-fourth to Govt. After some correspondence these proposals were sanctioned by Govt. In carrying them out the Deputy Commissioner of Kangra appears to have understood that the orders applied to the forests in the whole Taluka and not only to those of the four Jagir-Tappas, and the result has been that the Raja has since 1868 received three-fourths of the income from all the forests in the Taluka. The question is whether this mistake should now be corrected, or to remain as they are. It will be seen that the reporting Officers are at issue on this question, and have recorded separate memos on it. Colonel Stenrouse is in favour of literally carrying the original proposals, and while acknowledging the good management of the forests by the Raja, represents that a larger share of the forest revenues of his Jagir was conferred on him that was given to the other Rajas, and further, that the Raja has been altogether a gainer by the mistake made, as his receipts from Khalsa villages, to which he is not entitled, must have considerably exceeded the quarter share of sale proceeds of timber to ZamindaRs. which has hitherto been erroneously paid to Govt. Mr. Anderson, on the other hand, takes a more liberal view of the question. He would leave matters as they are, on the grounds that the forests were once part of Raja''s ancestral Estates and under more favourable circumstances, he would have been declared proprietor of the whole Taluka (See paragraph 10 of Mr. Lyall''s No. 12 of 2nd February, . 1868); that in some respects the Raja of the Nadaun is similarly situated as regards the Khalsa villages in his Jagir; that the forests in the Khalsa villages owe no small part of their present value to the Raja''s good management; and that although this proposal, if accepted, will confirm to the Raja more than he is entitled to receive under the orders of the Government part of excess, would be given way of compensation for loss of the share of sale proceeds of timber sold to ZamindaRs. which has hitherto gone to Govt. , and part was a reward for good services in managing these forests and as Honrary Magistrate and Civil Judge of the Taluka. These arguments appear to me to possess great force, especially the last, and it would, in my opinion. be a most ungracious act on the part of Govt. to make any change now in an arrangement made so long ago as 1860, during the minority of the Raja, by the officer in-charge of his estate, and would, in the eyes of the Raja at least, have the appearance of a breach of faith. These existing division of the income from these forests is, moreover, a much simpler one than that originally proposed and the loss to Govt. involved in 1t is very trifling. This is admitted by the Deputy Conservator of Forests. I, therefore, recommend that no change be made.

12. The petitioner submitted that the decision of the Lt. Governor of Punjab conveyed by letter dated May 25, 1916 finally resolved the dispute between the predecessor-in-interest of the petitioner and the Government of Punjab and the

conditions contained therein are similar to those which had been laid down in 1868. They are reproduced hereunder:

I. The management of the protected forests will continue in the hands of the Raja, subject to the recorded rights of use and to the following rules.

II. The Raja shall be bound by the general directions issued by the Forest Department.

III. The Raja shall keep a register of all leases to break up land which have been given by him. Such leases shall only be granted under the following conditions:

(1) That there are no trees standing on the land.

(2) That the land adjoins an existing main block of cultivation.

(3) That Khewatdars and Bartandars do not object.

(4) That the land has been Inspected by a Forest Officer, who has satisfied himself that the above conditions have been observed. In the Khalsa villages of Taluka Kutlehar whenever the Raja refuses an application to break up land, he shall refer the case for the confirmation of the Deputy Commissioner.

IV. The Raja shall keep such registers as the Deputy Commissioner may direct in which to record the trees and bamboos granted to right-holders. In these registers the Raja shall record all trees and bamboos cut for the use of himself and his family.

V. The Raja will dispose of applications made by traders or other for the purchase of trees or other forest produce, subject to the following conditions

(a) He may sell to traders only the trees that have been marked for this purpose by the Forest Department.

(b) He shall keep the sales of bamboos within the limits in regard to number and locality fixed by the Forest Department.

(c) He shall sell trees only at the rates approved by the Forest Department.

VI. The Raja will continue to realise the grazing fees from Gaddies at the rate fixed by Govt. or by mutual agreement between the Raja and Gaddies, subject to the approval of Deputy Commissioner as the case may be. The Raja shall be entitled to all such fee except as provided in Rule XIII.

VII. The Raja shall keep a register showing all receipts from the sale of timber, bamboos and other forest produce, whether to Zamindars or to traders. Of this income the Raja shall-

(a) In the case of Nadaun and Guler receive one-half and Government one-half.

(b) In the case of Kutlehar receive three-fourth and Government one-fourth;

NOTE: In the case of Dada Siba, the division of receipts is governed by Rule XIII.

VIII. The Raja shall continue to maintain the Forest Establishment.

B - In Dada Siba only.

IX. The Raja shall keep registers showing the income from grazing fees and sales of forest produce in all protected forests.

He will receive all income from undemarcated forests and half the net income from demarcated forests, the remaining half being credited to Government,

C - In Kutlehar only.

X. The Raja may continue to give licences to non-right-holders-

(1) to take dry wood;

(2) to take grass and patra;

(3) to graze their own cattle;

(4) to take leaves of chil for tanning;

(5) to take taur leaves;

(6) to take stones for grinding-mi1ls;

(7) to take limestone.

XI. The Raja shall keep a register showing the income drived from these licences, and shall receive three-fourth of such income, the remaining fourth being credited to Govt.

XII. The Raja shall pay to Government, on account of Gaddies fees in the Khalsa villages, Rs. 60 or such other sum as may be decided at the revision of the land revenue settlement.

XIII. The Raja Mankotia may graze his cattle and take forest produce for his own agricultural domestic purposes without payment, but may not cut green wood without the Raja''s permission.

13. Therefore, the arrangement between the pa, ties was compatible with the scheme of management provided under Sections 79 and 80 of the Forest Act 1878 and Sections 80 and 81 of the Indian Forest Act, 1927. This arrangement does not confer bounty on a private individual. It recognizes the competitive rights of an individual on the one hand and those of the Government on the other. This kind of arrangement'' was unique since no other similar arrangement has been there in the States of Punjab, and Himachal Pradesh. Even between the States inter se, the State of Kutlehar was given a distinction presumably because of the higher claims of the Ruler to the proprietary rights over the trees as compared to the Rulers of the States of Nadaun, Dada Siba and Guler who were granted only one-half share in the tc VI produce derived from the forests.

14. The Government of Punjab passed the Punjab Resumption of Jagirs Act,

1957. Action was taken under this Act everywhere in the State, however, the forest in question continued to remain under the management of the petitioner uninterruptedly on the same terms and conditions. No effort was made by the Government of Punjab to set at nought the arrangement primarily for the reason that the petitioner and his forefathers had 3/4th interest in the forest in the form of proprietary right though the records of rights described the State of Punjab as the owner. All this suggested the real and unassailable rights of the petitioner which culminated in the arrangement between the two sides and in case of any kind of hurdle, resort to legal remedies could be there to establish the right of sole proprietorship to these forests, as evidenced from the report of Mr. Anderson, Forest Settlement Officer, 1869. This arrangement continued in operation. Only modification made in it was that instead of 1/4th share of the gross receipts, 1/4th share of the net receipt was made payable to the State in case of resin. On the reorganisation of the State of Punjab in 1966, District Una, of which Kutlehar is a part, came to Himachal Pradesh. The Punjab Resumption of Jagirs Act, 1957 was made applicable in this State.

15. On January 19, 1990, the Government of Himachal Pradesh issued Notification No. Rev. /D(F) 7-1/90 whereby the management and possession of Kutlehar Jagir Forest was ordered to be taken over by the Principal Chief Conservator of Forest with the assistance of the Collector of Una. This power was exercised under Sub-clause (i) of Sub-section (1) of Sections 2 and 3 of the Punjab Resumption of Jagirs Act, 1957. It was challenged 1n this Court through Civil Writ Petition No. 42 of 1990 on the grounds, inter alia, that the Punjab Resumption of Jagirs Act, 1957 has no application to this case; that the forest land was neither an estate nor a Jagir; that the Notification was mala fide. The operation of this order had been stayed by this Court.

16. Thereafter, the Himachal Pradesh Legislative Assembly passed The Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992. It was submitted to the President under Clause (2) of Article 254 and Article 31A of the Constitution. Assent was granted and the Act came to force.

17. The petitioner challenged the constitutional validity of the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 on grounds, inter alia, that the Legislation was not valid being opposed to Article 300-A of the Constitution; besides, it violated the principles contained in Articles 14, 19 thereof and was not protected by Articles 31-A, 31-B and 31-C. Deletion of Articles 31 and 19(1)(f) from Part-Ill of the Constitution has protected the property rights of a person by including it in Article 300A of the Constitution. The State could not assert that this property was Jagir and came to an end after Punjab Resumption of Jagirs Act, 1957. The provisions of this Act and Articles 31A and 31C of the Constitution were in-applicable in this case.

18. The petitioner claimed that the Legislation was violative of the Constitution since it did not provide for the payment of compensation equivalent to market value and that the compensation intended to be given was wholly illusory and

amounted to fraud on the power. In case it was found that the Legislation was protected by Article 31C, the petitioner could question the Legislation and seek market value of the property under Article 300A of the Constitution and the principle laid, down by the apex Court in numerous decisions starting from The State of West Bengal Vs. Bela Banerjee and Others, supported by the views of the eminent authors like Professor P. K. Tripathi and Shri H. M. Seervai.

19. The State opposed the challenge stating, inter alia, that the lands in dispute were recorded as "Shamlat Tikka Hasab Mundraja Shajra Nasab" in the revenue records for the year 1955 and before. The area vested in village Panchayats under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 and thereafter in the State of Himachal Pradesh under the Himachal Pradesh Village Common Lands (Vesting and Utilisaton) Act, 1974. All the rights, title and interest in it were vested in the State Government including the trees and other properties. Consequently, the property ceased to be the property of any person including the petitioner who could not continue to manage the forest standing over the land. The petitioner was not owner of the trees but was managing the same subject to certain conditions. The arrangement could be dispensed with at any time.

20. After the advent of Sikh Rule around 1825, the principalities of Kangra, of which Kutlehar family was a smaller principality, were seized by Maharaja Ranjit Singh. This family was conferred a ''Jagir'' in Hoshiarpur District to the extent of Rs. 10, 000/-. Later, with the consent of British Government, this ''Jagir'' was shifted in four ''Tappas'' of Kutlehar in accordance with the arrangement. The ''Jagir'' was assignment of land revenue and nothing more. It is denied that any right was vested in the petitioner or his predecessors-in-interest by the said grant. So far as the grant of ''Jagir'' is concerned, the same came to an end under the provisions of Resumption of Jagirs Act, 1957. The petitioner received compensation under this Act and all rights, title and interest which the petitioner possessed in these four ''Tappas'', came to an end. However, he continued to manage the forests, the proprietary rights of which vested in the Government in accordance with the arrangement arrived at with the then State of Punjab. It is, however, admitted that the present dispute relates to 16 ''Tappas'' of land known as Kutlehar Forest which were declared protected forest and the petitioner and his predecessors-in-interest were assigned the management of this forest as a Manager and certain powers under the Indian Forest Act and other Forest Laws were conferred on him. Out of 16 ''Tappas, 4 were Jagir Tappas'' and 12 were Khalsa ''Tappas''. The management was to be carried on in accordance with the conditions contained in letter dated May 25, 1916. There is separate records of rights for each village included in the ''Tappa'', therefore, they are estate within the meaning of Article 31A of the Constitution of India and also under the provisions of the Punjab Land Revenue Act and the H. P. Land Revenue Act.

21. The right to property was no longer the Fundamental Right. State took step of taking over the management for achieving agrarian reforms and utilize the

property for the benefit of the society. There was no violation of Articles 14, 19 and 300A of the Constitution by passing of the Act. It has been denied that any improvements were made by the fore-fathers of the petitioner in growing these trees or that they were felled or disposed of from time to time being the proprietors of the same. Proprietary rights over the soil or the trees never vested in the petitioner. He had been felling the trees in accordance with the arrangement made by the then Punjab State and these conditions are mentioned in the Forest Department Notification No. 73 at page 45 of Forest Settlement Report by Sheep Shank. It is thus clear what was assigned to the petitioner or his forefathers vide amendments made on July 30, 1945, was the management of the trees on terms and conditions of management appended thereto or such other conditions which might be substituted for them. The petitioner was given only a licence to work the forest in accordance with the terms and conditions of management and at best a grant of services which could be resumed at any time by the State Government. Although the State Government could have taken over these rights by an executive order, however, it has done so by virtue of valid legislation enacted by the State Assembly with the prior consent of the President of India.

22. All the arrangements or the interest of the parties in the forest are to be deciphered from the Forest Settlement Report of Mr. Sheep Shank and Mr. A. Anderson relating to Kangra valley. It is denied that arrangement was provisional in nature. As a matter of fact, all the claims of the petitioner were rejected by the Lt. Governor of Punjab. The petitioner was required to pay 1/4th of the amount realised from the sale of the forest produce by way of royalty and retain 3/4th for himself. The arrangement to manage the forest was de hors to Indian Forest Act, 1878 or the Indian Forest Act, 1927. The 3/4th share receivable by him was in the nature of quid-pro-quo for the services to be rendered in the management of the forest. It was at best a service grant which could be resumed when these services were no longer required by the State. This kind of arrangement was not only with the petitioner since similar arrangement existed with rulers of Nadaun, Dada Siba and Guler and the higher share received by the petitioner did not make any difference bet-ween him and the other rulers.

23. Under the Punjab Resumption of Jagirs Act, 1957, all the Jagirs in Kutlehar, Dada Siba, Nadaun and Guler came to an end and the management had nothing to do with the ''Jagirs'' so granted. The public was demanding the taking over of these forests, income of which was being utilised by an individual. The forests were not worked on social lines. In these circumstances, it was in public interest that the management has been taken over through validly enacted legislation and by virtue of Section 4, all rights, titles and interest of the grantee in the forest or waste land held by him, stood vested in the Government free from all encumbrances. The Act has been enacted as a measure of agrarian reforms as well which is covered by Article 31A(1)(a) of the Constitution. Kutlehar Forest is an estate within the meaning of Article 31(1)(a) of the Constitution as well as Section 4(5) (a) (b) (c) of the H. P. Land Revenue Act. The definition of estate

under Article 31(1)(a) is wide enough to cover Kutlehar Forest inasmuch as this falls within the definition of local area, namely, Himachal Pradesh Land Revenue Act of which is a separate record of rights has been maintained and would have been assessed to land revenue in case it had not been realised/compounded/ redeemed. Even otherwise, it squarely falls within the definition of Article 2(a)(b) of Article 31(1)(a) of the Constitution. Therefore, the provisions of Article 31A are clearly applicable to the present legislation. By virtue of repeal of Clause (f) of Article 19(1), no Fundamental Right to properties is available to the petitioner and the legislation cannot be impugned on that basis.

24. The petitioner was allowed 75% of the gross income taking into consideration that a part of the income was to be invested in the maintenance, preservation and management of the forest and out of that income, the petitioner had constructed various infra-structures stated by him. The buildings which are personally owned by him in his own land, are not subject matter of acquisition. The petitioner and his forefathers have appropriated crores of rupees and only fraction of it has been invested by them. The State has been paid only 1/4th of the gross income by way of royalty. The personal property of the petitioner has not been taken over. However, such properties which were used in connection with the management of the forest, are to be taken over by the State Government. Only such properties which fall within the protected forest and demarcated forest are taken over by the impugned legislation and not the personal properties of the petitioner. He is being compensated adequately as he had only a right of management which could be taken over without even paying compensation.

25. Even otherwise, inadequacy of compensation is not challengeable. There has not been violation of Article 14 of the Constitution. The petitioner is a class by himself, as such, arrangements have already been taken over from the Rulers of Nadaun, Guler and Dada Siba, therefore, the action is neither arbitrary nor unreasonable. He is being paid adequate compensation even for terminating the management without any proprietary interest in the trees. Even the inadequacy of compensation can be decided by the Arbitrator under the Act. The allegation of non-application of mind by the State enacting this legislation has been denied. The legislation is a measure of agrarian reforms and is squarely covered by the Directive Principles of State Policy mentioned in Article 39(a) and (b) of the Constitution. Taking over of a huge forest, the income of which in crores of rupees was being appropriated by one person, is itself a measure in public interest. since Article 31 of the Constitution stands repealed, no grievance can be made by the petitioner.

26. No private property of the petitioner 1s being, acquired. The legislation takes over the management of a forest which had been entrueted to the petitioner at some stage. He had no right, title or interest in it and even 1f he had some, the same has been acquired by the legislation. The legislation cannot be challenged on the ground of motivation or mala fide. There was no pressure from any

Member of Legislative Assembly of Kutlehar constituency for taking over the management of the forest. In any case, no malice can be attributed to the Legislative Assembly which passed the Act.

27. The petitioner had been using and exploiting the forest commercially not from the point of view of social forestry. The correctness of the report published in the Indian Express has been denied and it has been stated that the same is irrelevant. The State has taken over the forest in the interest of the revenues of the State as well as for social, ecological and environmental reasons. All other allegations of the petitioner have also been denied.

28. The Full Bench of this Court held that the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 fell within the ambit of Articles 31A and 31C of the Constitution and the management of the forest was taken over competently through this legislation. In para 62 it has been held that:

62. Therefore, we hold that it is a case of management grant in favour of the petitioner and the retention of 3/4th share is not only by way of managerial charges but also for meeting the expenses towards the plantation, maintenance and management of the trees. The legislation seeks to take over the management from the petitioner against payment of amount that may be determined in accordance with Section 5 of the Act.

Again, in para 68 it has been held that:

68. The forest in question is owned by the Government, therefore, it is a public property. It is being managed by an individual. The Constitution envisages a socialistic pattern of society, therefore, management of the forest by the Government for the welfare of the people in general and village community in particular on social lines and from ecological angle is undoubtedly a public purpose. It also seeks to achieve the principles enunciated in Articles 38 and 39 of the Constitution of India. It does not suffer from legislative competence since we find that the legislation falls under entry 17A and Entry 18 of List II and Entry 42 of List III of the 7th Schedule of the Constitution. The items in the 7th Schedule to the Constitution enumerate broadly the subjects over which the Parliament or the State Legislature can competently legislate. They have to be given broad and meaningful interpretation and, therefore, while enacting laws on particular topics, competent legislature can enact laws covering wider field without going completely out of the assigned arena. We think, the State Legislature has not attempted to cross the fence while enacting the impugned legislation to cover the subject matter.

In para 73 the Full Bench also held that:

73. Article 300A is not a Fundamental Right, it is only a legal right requiring the acquisition of property by legislation in place of executive fiat, therefore, the contention raised in this regard is completely unsustainable. The forest under acquisition is an estate under Article 31A(1)(a) as defined under Article 31(2)(a).

Assistance from the Land Revenue is relevant since it defines it and not from the Tenancy Act. Alternatively, it falls under (i). It is a ''Jagir'' or in any case, a management grant and can be acquired. The case does not fall under (iii). The submission touching Art, 31C is that the legislation is intended to give effect to the policy of the State towards securing the principles laid down in Articles 38 and 39 of the Constitution since it intends to take the management of the forest from the petitioner for the purpose of managing it on social lines and in the interest of the public and environment.

In para 78 it has been held that:

78. Article 31A(2) gives a wide definition of "estate". This definition is inclusive in nature. It not only defines "estate" being one which has been defined in the existing law relating to land, tenure in force in the area but also Ors. falling under items (i) to (iii). In our opinion, in order to give meaningful and functional interpretation to it in the context of the local area, the Tenancy Laws as well as the Revenue Law will have to be read together and if so read, we can definitely conclude that the land and the forest is an estate within the meaning of H. P. Land Revenue Act, 1953, the H. P. Tenancy and Land Reforms Act. , 1972 and the H. P. Ceiling on Land Holdings Act, 1972. There is also a separate record of rights for it. It would have been assessed to land revenue had it not been assigned for management on special terms and conditions between the parties. We find that four ''Tappas'' formed ''Jagir'' which was resumed by Punjab Government under the Resumption of Jagirs Act, 1957 against payment of compensation, though the petitioner continued to manage the forest thereafter also with other twelve ''Tappas'' which conjointly formed the total management grant in favour of the petitioner in acknowledgement of his interest therein by the Government. In any case, it was not a cash grant as sought to be made out by the petitioner. The matter does not fal1 under (iii) since this provision requires that it must be held or let for purposes of agriculture or for purposes ancillary thereto in view of the apex Court decisions referred to above.

The Full Bench further said in paras 81 to 83 that:

81. We, therefore, hold that it is an estate within the meaning of Articles 31A(1)(a), 31(2)(a) and 31A(2)(a)(i) of the Constitution and is, therefore, protected from challenge on the ground that it is inconsistent with or takes or abridges any of the rights conferred by Articles 14 and 19 of the Constitution of India.

82. Going over to the next question, we entertain no doubt about the fulfilment of objective contained in Articles 38, 39(b) and (c) of Directive Principles of State Policy contained in Part-IV of the Constitution, through the impugned legislation. We have held that the management interest of the petitioner in the forest is a property which the legislation intends to acquire and not choses in action or cash grant being received by the petitioner for the management of this forest. Simply because the petitioner is likely to lose 3/4th gross income from the forest on account of this legislation, it does not mean that his money or case is being

acquired. The legislation seeks to acquire the management of forest extinguishing whatever right, interest the petitioner has in it. Therefore, the loss of the 3/4th income of the petitioner, cannot be taken to be the object of the legislation.

83. The forest belongs to the Government, though, its management has been assigned to the petitioner on settled terms. In a socialistic pattern of society, such a huge forest cannot be allowed to be managed through an individual. It has to be used for the good of the general public and managed on scientific lines. The contention that it does not achieve agrarian reforms, is not sustainable in view of the stand of the Respondents that the forest is being taken over for social, ecological and environmental reasons in addition to the revenue of the State and to do away with the individual management avoiding concentration of wealth in the hands of an individual and utilise the same for common good.

In para 92 it has been said that:

92. In the light of the aforesaid discussion, we hold that the Act falls within the ambit of Article 31A and 31C of the Constitution and the challenge of the petitioner is rejected. Even otherwise, the State Legislature can competently take over the management through the present legislation.

29. However, the Court struck down Section 5 of the Act. On the question of payment of compensation, precise submission of the learned Counsel for the petitioner was:

93. Now, we propose to deal with the contention of Shri D. D. Thakur that the impugned legislation is violative of the Constitution since it does not provide for the payment of compensation equivalent to market value and that the compensation intended to be given is wholly illusory and amounts to fraud on the power. It was also, submitted that in case it is found that the impugned legislation is protected by Article 31C and deletion of Article 19(1)(f) and Article 31(1), the right of the petitioner to question the legislation and seek market value of the property is fortified by Article 300A of the Constitution. By this change, decision of the Supreme Court in The State of West Bengal Vs. Bela Banerjee and Others, interpreting "compensation" being equivalent to the market value of the property, becomes applicable. Besides making reference to these decisions, our attention was drawn to the views of eminent authors like Professor P. K. Tripathi and H. M. Seervai expressing opinion on the effect of the deletion Article 31 from Part III of the Constitution and enactment of Article 300A.

The Court found and held that (paras 98 to 100):

98. Now, we look at the impugned Act. Section 5 provides that the Government shall pay to the petitioner an amount equivalent to 1/5th of the net income after deduction of all lawful expenses incurred by him in the management during the financial year 1988-89 and the said amount shall be paid in five instalments payable on the first day of June every year with interest at the rate of 9 percent

per annum. It was strongly contended by Shri D. D. Thakur that the compensation intended to be paid is thoroughly unreasonable and illusory. Lean year of 1988-89 has been selected intentionally without any reasonably acceptable criteria. The total annual gross receipts of the forest were ranging between rupees forty to sixty lacs. 3/4th share of that amount would be between thirty to forty lacs. After deducting the amount of expenses on the maintenance of the forest, net saving would come to'' rupees twenty to twenty-five lacs. In case compensation is determined according to the method of capitalisation the multiplier cannot be less than twenty as is generally done in acquisitions under the Land Acquisition Act. Reference to the following paragraph of Rustom Cavasjee Cooper Vs. Union of India (UOI), was made (p. 609):

The important methods of determination of compensation are (i) market value determined from sales of comparable properties, proximate in time to the date of acquisition, similarly situate and possessing the same or similar advantages and subject to the same or similar disadvantages. Market value is the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase; (ii) capitalization of the net annual profit out of the property at a rate equal in normal cases to the return from gilt-edged securities. Ordinarily value of the property may be determined by capitalizing the net annual value obtained in the market at the date of the notice of acquisition, (iii) where the property is a house, expenditure likely to be incured for constructing a similar house, and reduced by the depreciasion for the number of years since it was constructed; (iv) principle for reinstatement, where it is satisfactorily established that reinstatement in some other place is bona fide intended, there being no general market for the property for the purpose for which it is devoted (the purpose being a public purpose) and would have continued to be devoted, but for compulsory acquisition. Here compensation will be assessed on the basis of reasonable cost of reinstatement; (v) when the property has out-grown its utility and it is reasonably incapable of economic use, it may be valued as land plus the break-up value of the structure. But the fact that the acquier does not intend to use the property for which it is used at the time of acquisition and desires to demolish it or use it for other purpose is irrelevant; and (vi) the property to be acquired ordinarily to be valued as a unit. Normally an aggregate of the value of different components will not be the value of the unit.

Therefore, it was asserted that none of these methods have been made use of while enacting the provisions of Section 5 of the impugned Act, so the provisions are not only arbitrary but also confiscatory in nature and, therefore, liable to be struck down.

99. We see great substance in this contention for the reasons stated by the learned Counsel. In addition to them, we feel that a proper and reasonable mode of assessing the compensation should have been provided for assessing the compensation intended to be payable to the petitioner (see Statement of Objects

and Reasons). The petitioner may not have proprietary interest in the forest but he had substantial interest in it that is why the management of the forest has been assigned to him since the time of his ancestor. It has been maintained efficiently throughout. It would not be" wrong to accept the contention that it is one of the best maintained forest in the country. The petitioner and his ancestors have not only been looking after the existing trees but had been planting trees from time to time making the property quite valuable. It was on account of this onerous task that out of the gross income of the forest, 3/4th share was receivable by him. Out of it, the petitioner has constructed numerous establishments, passages, roads and has utilised even his private property in this epdeavour. It is also recordable that the whole family is engaged in the management of the forest and taking over the management of the forest would, obviously, affect his living adversely for the whole future, making them to depend on the small private property including those retained by the petitioner under the Ceiling Laws and those not forming part of the subject matter of the present action. We see no reasonably justifiable reason for selecting year of 1988-89 for setting the amount and not averaging of some years of the best year or adopting other well-known method(s) for determining it. Therefore, in the totality of the circumstances, it is held that Section 5 of the impugned Act is totally unjust and unreasonable. The same is accordingly struck down since it is severable from the other provisions of the Act.

100. Even if Article 14 has been made inapplicable in the context of Articles 31A and 31C, fairness and reasonableness of the statute is open to examination on the ground whether the impugned Act is just, fair and reasonable or arbitrary in nature; but alternative submission that Article 31C is violative of basic features of the Constitution, does not survive since the constitutional validity of this amendment has already been upheld by the Supreme Court long back.

30. Both the parties did not take the matter to the apex Court thereby accepting the findings recorded by the Full Bench of this Court on all the questions which were raised before it. Consequently, the State Government passed the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Amended Act, 1994 whereby the State Legislature re-enacted Section 5 of the Act. For understanding the controversy between the parties, it is necessary to quote Section 5 in the original and amended form:

Section 5 of the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 reads thus:

5. (1) In consideration of the vesting in the Government the right, title and interest of any person u/s 4 the Government shall, subject to the provisions of this Act, pay to such person an amount equivalent of one fifth of the net income, after deduction of all lawful expenses incurred by him in the management, accrued to him during the financial year 1988-89.

(2) The amount payable under Sub-section (1) shall be paid on the 1st day of

June, every year for a period of five years from the appointed day and shall bear interest at the rate of 9 per cent per annum from the date such amount becomes payable till the date of payment.

31. Section 5 of the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Amendment Act, 1994 is as follows:

5. Amount to be paid by the Government. -

(1) In consideration of the vesting in the Government the right, title and interest of any person u/s 4, the Government shall, subject to the provisions of this Act, pay to such person an amount equivalent to the net income, after deduction of all lawful expenses incurred by him in the management, accrued to him during the five financial yeaRs. preceding immediately the publication of this Act in the Official Gazette, in five annual equal instalments.

(2) The amount payable under Sub-section (1) shall be paid on the 1st day of June, every year for a period of five years from the appointed day and shall bear interest at the rate of 10 per cent per annum from the date such amount becomes payable till the date of payment.

32. The question for determination is whether the enhanced amount of compensation by the Amendment Act of 1994 suffers from the same invalidity with which this provision was afflicted before amendment for reasons recorded by the Full Bench while striking down this Section. Shri D. D. Thakur, learned Senior Counsel, contended vehemently that the amended provision does not make much improvement in the position that existed before nor does it provide any purposeful relief to the petitioner. Assuming that Fundamental Right to property has ceased to exist but its incorporation under Article 300A of the Constitution immunes it from the checks to which it had been subjected to prior to Forty-fourth Amendment to the Constitution. The result of this change, therefore, is that the State is required to pay compensation to an ex-propriated owner at the market rate meaning thereby the rate which the property can fetch at present in the market. Consequently, the principles laid down by the apex Court in decisions like Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, ; The State of West Bengal Vs. Subodh Gopal Bose and Others, ; The State of West Bengal Vs. Bela Banerjee and Others, ; Kameshwar Prasad and Others Vs. The State of Bihar and Another, ; P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, ; Rustom Cavasjee Cooper Vs. Union of India (UOI), and His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, are applicable and the market rate presently comes to Rs. 234. 50 crores. A citizen may have a restricted right to claim compensation before Forty Fourth Amendment but this right has become absolute as a result of deletion- of Article 31 from Part III of the Constitution. In support of this argument, reference was made to the views of Professor P. K. Tripathi and H. M. Seervai.

33. Alternatively, Shri D. D. Thakur, learned senior counsel for the petitioner, contended that in case the claim for payment of market value of I the property is

not accepted, a citizen can claim compensation which is reasonable. Courts can invalidate acquisition on the ground of inadequacy or unreasonableness.

34. Professor P. K. Tripathi in his article "Right of Property after Forty-fourth Amendment" better protected than ever before - (published in AIR 1980 Journal 49), opined that the impression that the State is now free to impose any kind of restriction on the property and acquire property compulsorily for any purposes it choses without paying anything to expropriated owner in return of the property taken from him, is far from constitutional position. In reality, this right of the citizens and non-citizens has been secured more comprehensively than even before. Now, any amendment in the existing position will require not only the procedure laid down in main part of Article 368 to be followed but also the consent of the States under the proviso to the Article. The State will not be able to acquire property without showing public purpose and without paying full compensation or market value of the property. While making laws on "acquisition and requisitioning of property" the requirement of public purpose and payment of compensation for the acquisition and requisitioning of the property from expropriated owner will have to be satisfied. These requirements were expressly laid down in Article 31 and now they have to be read by implication.

35. According to Shri H. M. Seervai (Constitutional Law, 3rd Edition, Vol. 11), a law for the "acquisition" of private property of persons (the owners) for the benefit of private persons (the recipients) without compensation would be a law unknown to our jurisprudence. It would amount in substance a confiscation of owner''s property accompanied by a gift of it to the recipients. Confiscation or forfeiture of property is known to our law as punishment for a crime, and the property confiscated vests in the State. Deprivation of property by confiscation is part of the sovereign police power of the State and subserves a public purpose to deter people from committing crime or to take the profit out of crime. Confiscation of private property of innocent people for the benefits of private persons is a kind of confiscation unknown to our law. Whatever meaning the word "acquisition" may have, it does not cover "confiscation" for to confiscate means "appropriate to the public treasury" (by way of penalty). Consequently, a law taking private property for a private purpose without compensation, would fall outside Entry 42, List III and cannot be supported by Anr. Entry in List III. It is clear, therefore, that the requirement of a public purpose and the payment of compensation must be read into Entry 42, List III.

36. Shri Thakur also referred to Bombay High Court decision in Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another, in which the following observations have been made:

18. That takes us to an interesting argument presented to us about the introduction of Article 300A in Chapter IV of Part XII of the" Constitution. Shri Singhavi submitted that even assuming that the submission urged on behalf of the Respondents that the Act is protected by Article 31C of the Constitution and the fundamental rights under Articles 14, 19 and 31 are not available is correct,

still the provisions of Sub-sections (3) and (4) of Section 44 of the Act cannot stand the scrutiny of Article 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save by authority of law and it was urged that the expression "authority of law" means rule of law or in other words the law providing for deprivation of the property shall be just, fair and reasonable. Shri Paranjpe on the other hand submitted, and ably supported by Shri Gumaste, that after deletion of Article 31 from the Constitution with effect from June 20, 1979 by Section 6 of Constitution (44th Amendment) Act, 1978, the citizen has no right to claim compensation for deprivation of the property. It was urged that the right conferred on the holder of the property under Article 300A is only a legal right and not a fundamental right, as earlier available under Article 31 of the Constitution. The submission is that under Article 300A of the Constitution, the Parliament, merely intended that there shall not be deprivation of the property except by legislation or in other words the Parliament did not desire deprivation by executive action, but limited such deprivation only by legislation. Shri Paranjpe went a step further and submitted that once the right to hold property is removed from Part III of the Constitution, then no protection whatsoever is available to the holder of the property and there is no obligation on the Legislature to pass legislation which is just, fair and reasonable, or to provide for payment of any compensation or amount for the deprivation of the property. Shri Singhavi, in answer to this submission, urged that inspite of deletion of Article 31 from the Chapter on Fundamental Rights the phraseology used in Article 300A is identical with that of Article 31(1) and that is indicative of the fact that the Parliament recognised the doctrine of eminent domain and the obligation to pass legislation, which is just, fair and reasonable, is not taken away....

Again in para 19, it has been observed that:

As mentioned hereinabove, Article 300A of the Constitution reproduces verbatim provisions of Article 31(1) and the submission urged is that the doctrine of eminent domain would come into play and though the Government has power to deprive owner of the property, such power is circumscribed by two conditions, being requirement of a public purpose and the obligation to pay compensation. On the other hand, it was claimed that deletion of Article 31(2) makes it clear that the property can be compulsorily acquired and the two requirements need not be present. Art, 300A provides that no person shall be deprived of his property save by authority of law and it is impossible to accede to the submission that the authority of law can enable deprivation of property for a private purpose. The entire democratic structure of the country is based upon the concept of ''rule of law'' and it is not possible to imagine that the legislation can provide for compulsory acquisition of a private property for a purpose which is not a public purpose....

37. Consequently, after the enactment of Article 300A of the Constitution, a citizen can claim compensation equivalent to the market value of the property

from the State in the event of his property being acquired by the State for public purpose under the principle of ''eminent domain''. It pre-supposes acquisition of property by authority of law, existence of public purpose and payment of compensation. These conditions have necessarily to be read into Article 300A otherwise preposterous consequences, enabling the State to take any one''s property for any purpose other than public purpose and without payment of compensation, would ensue. The directive principles of State Policy contained in Clauses (b) and (c) of Article 39 and Article 31C of the Constitution would not diminish the inherent right of the citizen to be paid compensation for the acquisition of his property by the State for public purpose. All these aspects have to be read together for understanding the real meaning of these constitutional provisions and if so read, it is not intended to deprive the citizen of his right to claim compensation or pay any compensation that may be even illusory or has no relation with the property acquired.

38. After referring to various provisions of Part-Ill of the Constitution of India, more particularly, Articles 14, 19, 31A and 31C, Shri Thakur advanced the submission that the petitioner cannot accept unreasonably and arbitrarily fixed amount when the value of the property is more than Rs. 234. 50 crores. Referring to Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., . , etc. etc., it was contended that this decision is not binding on this Court being in conflict with larger Bench decisions of the apex Court, therefore, it cannot be followed in view of decisions like: Union of India (UOI) and Another Vs. K.S. Subramanian, ; The State of U.P. Vs. Ram Chandra Trivedi, ; State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, ; A.R. Antulay Vs. R.S. Nayak and Another, Though Shri Thakur admitted that in Constitution Bench of apex Court in Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, . it has been held that a law providing for acquisition was protected by Article 31C of the Constitution and the adequacy or justness or fairness of the amount of compensation could not be justiciable, but submitted that though this Judgment was rendered in 1989 yet reported in 1990 long after the 44th Amendment to the Constitution and related to an Act of 1973 when provisions of Articles 31(3) and 31(2-A) were intact. This Judgment has no application to the facts of the present case. Other decisions Assam Sillimanite Ltd. and another Vs. Union of India and others, .; and (1994) 1 SCC 45 Ved Parkash and Ors. v. Union of India and Ors. are not applicable having been decided in the context of their own facts.

39. The petitioner filed representation before the High Power Committee of the State Government to determine the compensation but his submissions were rejected although they were supported by Court decisions.

40. It was contended by Shri B. Dutta, learned Senior Counsel for the State that the State Government accepted the Full Bench decision of this Court Mohinder Pal Vs. State of H.P. and Others, and re-enacted Section 5 of the Act. Now, the amended provision provides payment of amount equivalent to the net income,

after deduction of all lawful expenses incurred by the petitioner in the management, accruing to him during the five financial yeaRs. preceding immediately the publication of the Act in the Official Gazette, in five equal instalments payable on the first day of June every year for a period of five years from the appointed day bearing interest at the rate of 10% per annum from the date such amount becomes payable till the date of payment. Another safeguard provided to the petitioner is that before making any deduction u/s 5, he is to be given a notice to show cause against such deduction. Payment of the compensation in instalments for a period of five years is in the interest of the petitioner and also the State since by doing so, the petitioner will get fair and reasonable amount every year after deduction of lawful expenditure and 1/4th Government share from the gross income during the five financial years determined by the Special Officer to be appointed within the frame work of Sections 6 and 7 of the Act. Method of capitalisation is not relevant in the present case as the petitioner is not owner of the forest and the claim that the forest was raised out of his own money, , is not correct since he did so from out of the 3/4th income derived from the forest as per the condition for management. Although there could be no requirement for paying any amount for taking over the management of the forest through legislation, more particularly, after deletion of Fundamental Right to property, yet the State Government took a sympathetic view of the matter and provided for payment of adequate amount which was further enhanced by the amended provision after the Full Bench decision of this Court. The petitioner has challenged this provision on those very grounds which were pressed into service for assailing Section 5 in the original form. The claim that the petitioner is receiving net income of thirty lac rupees every year, is completely untenable for lack of supporting evidence. Value of trees fixed by the petitioner is disputed. Assuming that it is so, the petitioner cannot derive any benefit out of it since the forest belongs to the Government and the petitioner was simply managing it. The forest has been developed out of 3/4th income of the forest retained by the petitioner according to the terms of management. Manager of an establishment cannot claim any amount from the owner for the establishment thereof. The value of the trees, as a matter of fact, supports the claim of the State that such a big resource cannot be permitted to be managed and utilised by an individual. It has to be taken over by the State for common good as rightly held by the full Bench of this Court.

41. This matter has already been examined and decided in the context of Articles 14, 19(1)(a)(f), 31A and 31C of the Constitution. The case of the petitioner has been rejected by the Full Bench in this regard. The Full Bench struck down Section 5 on the ground of unjustness/unreasonableness. The short question that falls for consideration is whether this vice stands vanished by the amendment and whether the petitioner is entitled to market value of the property and whether the amended provision provides for reasonable compensation.

42. According to Shri B. Dutta, provisions of Article 30(1-A) and second proviso to Article 31A demonstrate that where the legislature intended to provide

compensation equivalent to market value of the property acquired, specific provision has been made in that regard. For other cases, there is no obligation to pay any compensation or amount, so claim for compensation equivalent to the market value of the property can hardly be appreciated. The principle laid down by the apex Court in The State of West Bengal Vs. Bela Banerjee and Others, .; and Kameshwar Prasad and Others Vs. The State of Bihar and Another, and in a few other cases is no longer applicable after the subsequent amendment to the Constitution. At the most, the jurisdiction of the Court is confined to the question whether the legislation provides for payment of compensation if there is such a requirement, whether the compensation is illusory and mere pretence. All the relevant decisions have been mentioned in the full bench decision of this Court. All the decisions on which reliance has been placed by both '' sides, have to be understood in the context of the relation of the petitioner with the forest.

43. In para 62 of the Full Bench decision Mohinder Pal Vs. State of H.P. and Others, it has been held that:

62. Therefore, we hold that it is a case of management grant in favour of the petitioner and the retention of 3/4th share is not only by way of managerial charges but also for meeting the expenses towards the plantation, maintenance and management of the trees. The legislation seeks to take over the management from the petitioner against payment of amount that may be determined in accordance with Section 5 of the Act.

Further, it has been held in para 82 that (p. 42):

82. Going over to the next question, we entertain no doubt about the fulfilment of objectives contained in Articles 38, 39(b) and (c) of Directive Principles of State Policy contained in Part-IV of the Constitution, through the impugned legislation. We have held that the management interest of the petitioner in the forest is a property which the legislation intends to acquire and not choses in action or cash grant being received by the petitioner for the management of this forest. Simply because the petitioner is likely to lose 3/4th gross income from the forest on account of this legislation, it does not mean that his money or cash is being acquired. The legislation seeks to acquire the management of forest extinguishing whatever right, interest the petitioner has in it. Therefore, the loss of 3/4th income of the petitioner, cannot be taken to be the object of the legislation.

Finally, in para 83, the Full Bench said that:

83. The forest belongs to the Government, though, its management has been assigned to the petitioner on settled terms. In a socialistic pattern of society, such a huge forest cannot be allowed to be managed through an individual. It has to be used for the good of the general public and managed on scientific lines. The contention that it does not achieve agrarian reforms, is not sustainable in view of the stand of the Respondents that the forest is being taken over for social, ecological and environmental reasons in addition to the revenue of the

State and to do away with the individual management avoiding concentration of wealth in the hands of an individual and utilise the same for common good.

44. In support of the validity of Section 5 as amended and re-enacted with the Presidential assent, strong reliance was placed on State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others, ; State of Gujarat and Another Vs. Kamlaben Jivanbhai and Others, ; Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, ; Assam Sillimanite Ltd. and another Vs. Union of India and others, ; and Smt. Elizebath Samuel Aaron and Others Vs. State of Kerala and Others, and it was contended that the provision is constitutionally valid and provides for just and reasonable compensation. The principles laid down for determining the compensation are reasonable and relevant giving fair and adequate compensation to the petitioner for divesting him from the management of the forest and it cannot be said that the amount which becomes payable to him after following these principles, is illusory or has no relation with the nature of right the petitioner possessed in this forest. After the Full Bench decision, holding that the State picked up the lean year for payment of amount, the State has taken into consideration five important years enhancing the quantum of compensation sufficiently.

45. Finally, strong reliance was placed on the latest decision of the apex Court in Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., . and it was contended that this decision is the result of a proper analysis and understanding of all past decisions on the subject, therefore, it is clearly applicable to the present case and the contention that it cannot be applied since it is in conflict with the law laid down by number of constitutional Benches of the apex Court, is not correct. As a matter of fact, this decision does not depart from the principle of law laid down in these decisions. It is applicable in the present case fully and contention of the petitioner''s counsel that being a decision by smaller Ben h it be not followed in preference to the earlier larger Benches'' decisions, is rejected. It is necessary to quote some of the paragraphs since they can be usefully applied to this case to a great extent. Further, no later judgment, taking contrary view, was brought to our notice.

19. The pinnacle contention is that Section 69A of the Code though was included in the Ninth Schedule, is not a law relating to agrarian reforms and, therefore, it does not get the protection of Article 31A. It is a law relating to acquisition of mines and minerals belonging to the Appellants and Ors. which had come into force from December 8, 1992 also is not a law made under Article 39(b) and (c) and does not get the protection under Article 31C. Even otherwise since it was a post His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . Section 69A should stand the test of basic structure of the Constitution. Though the right to property lost its protective armour as fundamental right after Constitution''s 44th Amendment Act, 1978, it was resurrected under Article 300A as constitutional right. The law must meet the test of Articles 14 and 21 of the Constitution also. Since it was given retrospective operation from May 1, 1960,

the compensation provided under Sub-section (4) of Section 69A of the Code is void as compensation was not just equivalent to the property acquired or full indemnification to the owner of the mines and minerals ex-propriated. It must not be arbitrary and unjust. The quantification or principles in Section 69A (1) and (4) therein are illusory offending Articles 14, 21 of the Constitution. Section 7 of the Act and other related statutes provide compensation different from the one provided under Sub-section (4) of Section 69A and that it is discriminatory and bears no reasonable relation to the object of acquisition and that therefore, it is unjust, unfair violating Article 14 and unfair procedure offends Article 21 of the Constitution. The acquisition u/s 69A(1) is in violation . of Article 300A as it is not for public purpose and no market value is being paid and is it is void. Sri Dave, learned Counsel for the State refuted the contentions in chorus of M/S. Zaveri, Ganguli, T. u. Mehta and D. U. Shah, the learned Counsel represented the Appellants.

26. Whether right to property is the basic structure was pointedly projected for the first time assailing the imposition of ceiling on agricultural holdings in Maharashtra Agricultural Lands (Ceiling on Holdings)Act, 1961 as amended upto 1976 in Waman Rao and Others Vs. Union of India (UOI) and Others, , Chandrachud, C. J. , speaking for the unanimous Constitution Bench, that decided first Minerva Mills case prior to Constitution 44th Amendment Act, 1978, considered the constitutionality of the first Constitution Amendment Act, 1951 introducing Article 31-A and Article 31-B traced the history of land tenures, the debates in the Constituent Assembly, need for the agrarian reforms and stated that in our predominantly agricultural society, there is a strong linkage between ownership of land and the person''s status in the social system. Those without land suffer not only from an economic disadvantage, but also a concomitant social disadvantage. In the very nature of things, it is not possible to provide land to all landless persons but that cannot furnish an alibi for not undertaking at all a programme for redistribution of agricultural land. Agrarian reform therefore requires, inter alia, the reduction of the larger holdings and distribution of the excess land according to social and economic considerations We embarked upon a constitutional era holding forth the promise that we will secure to all citizens justice, social, economic and political equality of status and of opportunity; and last but not the least, dignity of the individual. Between these promises and the Ist Amendment there is a discernible nexus, direct an immediate. Indeed, if there is one place in an agriculture-dominated society like ours where citizens can hope to have equal justice, it is on the strip of land which they till and love, the land which assures to them dignity of their person by providing to them a near decent means of livelihood The First Amendment has thus made the constitutional ideal of equal justice and living truth. It is like a mirror that reflects the ideals of the Constitution; it is not the destroyer of its basic structure. The provisions introduced by it and the 4th Amendment for the extinguishment or modification of rights in lands held or let for purposes of agriculture or for purposes ancillary thereto, strengthen rather than weaken the basic structure of

the Constitution. . It seems to us ironical indeed that the laws providing for agricultural ceilings should be stigmatized as destroying the guarantee of equality when their true object and intendment was to remove inequalities in the matter of agricultural holdings. The Constitution (First Amendment) Act and the (4th Amendment) Act do not destroy or damage the basic structure of the Constitution. This Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, held that Article 31C brought and Constitution 25th Amendment Act, 1971. given full play as it fulfils the basic purpose of restructuring the economic order. Each word in Article 39 has a strategic role and the whole Article has a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is so to undertake distribution as best to subserve the common goal. It reorganizes, by such distribution, that the ownership and control of material resources are of the community. Resources is a sweeping expression and covers not only each sources but even ability to borrow credit resources In State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others, . Constitution Bench interpreting Article 39(b) and (c) (material resources) held that the concept is wide enough to cover not only natural or physical resources but also movable or immovable properties such as the vehicles, tools, implements and the workshops etc. The mere fact that the resources are material will make no difference in the concept of the word ''resources''. The word ''Distribution'' used in Article 39(b) must be broadly construed so that a court may give full and comprehensive effect to the statutory intent contained in Article 39(b). It should not be construed in a purely literal sense so as to mean only division of a particular kind or to particular persons. The word ''distribution'' will include various facets, aspects, methods and terminology of a broad-based concept of distribution. It does not merely mean that property of one should be taken over and distributed to Ors. like land reforms. It is only one of the modes of distribution but not the only mode. Nationalisation of the transport as also the units, the vehicles would be able to go to the farthest "as possible and provide better and quicker and more efficacious facilities. " Nationalisation of contract carriages were thus upheld.

33. It is true as contended by Sri Javery that Cl. (2) of Article 31 was not suitably incorporated in Article 300A but the obligation to pay compensation to the deprived owner of his property was enjoined as an inherent incident of acquisition under law is equally untenable for the following reasons. Ramanatha Aiyar''s ''The Law Lexicon'' Reprint Edition 1987, p. 385, defined ''eminent domains'' thus: "The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. This right is called "eminent domain. " At p. 386 it was further stated that the sovereign power vested in the State to take private property for the public use, providing first a just compensation therefor. A superior right to apply private property to public use A superior right inherent in society, and exercised by the sovereign power, or upon delegation from it,

whereby the subject-matter of rights of property may be taken from the owner and appropriated for the general welfare. The right belonging to the society or to the sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the State is called eminent domain. The right of every Government to appropriate otherwise than by taxation and its police authority, private property for public use. The ultimate right of sovereign power to appropriate not only the public property but the private property of all citizens within the territorial sovereignty, to public purpose. Eminent domain is in the nature of a compulsory purchase of the property of the citizen for the purpose of applying to the public use. " In ''Black''s Law Dictionary'' 6th Edition, at p. 523 ''eminent domain'' is defined as ''the power to take private property for public use by the State, municipalities and private persons or corporations authorised to exercise functions of public character. In United States the power of eminent domain is founded in both the Federal (Fifth Amendment) and State Constitutions. The Constitution gives the power to take for public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as ''condemnation'' or ''expropriation''.

48. The word "property" used in Article 300A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and expropriated the property. No abstract principles could be laid. Each case must be considered in the light of it''s own facts and setting. The phrase ''deprivation of the property of a person'' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by the Parliament or of a State Legislature, a rule of a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner''s consent. Prima facie, State would be the Judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the Court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300A nor exercise of eminent domain an acquisition or taking possession under Article 300A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300A. It would be by exercise of the Police power of the State. In other words, Article 300A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation.

Acquisition of mines, minerals and quarries is deprivation under Article 300A.

(Emphasis supplied)

49. The question then is whether the owner of the property is entitled to compensation i.e. just equivalent or indemnification to the owner of the property expropriated. It is common knowledge that when the State exercises its executive power to acquire private property, it is under the Land Acquisition Act, 1894 or Similar State Laws Acquisition thereunder though is for public purpose, payment of compensation at the prevailing market value as on the date of the relevant notification published in the official gazette is sine qua non. The State when exercises the power of eminent domain under Article 300A and acquires or requisition or taken possession of the property of a citizen to give effect . to any of the directive principles envisaged in Part IV of the Constitution, the question emerges whether the same yardstick of payment of just equivalent or idemnification to the owner of the property expropriated should be applicable or Article 300A per force brings it in operation ? Since Article 31(2) itself provided payment of compensation, when property was acquired preceding 25th Constitution Amendment Act, 1971, this Court interpreted the word "compensation" as aforesaid, but when Article 31(2) itself was omitted from the Constitution, the question arises whether payment of compensation is a sine qua non for deprivation of property under Article 300A ? In any democracy governed by rule of law, Constitution is the supreme law of the land. Rescoe Pound, a sociological jurist whose writings have virtually opened new vistas in the sphere of justice, stated that ''the justice meant not as an individual or ideal relations among men but a regime in which the adjustment of human relations and ordering of the human conduct for peaceful existence. '' According to him, ''the means of satisfying human claims to have things and to do things should go around, as far as possible, with least friction and waste. In his "A survey of Social Interest", 57th, Harvard Law Review, 1 at 39 (1943), he elaborated thus:

Looked at functionally, the law is an attempt to satisfy, to reconcile, to harmonise, to adjust these overlapping and often conflicting claims and demands, either through securing them directly and immediately, or through securing certain individual interest or through delimitations or compromises of individual interests, so as to give effect to the greatest total of interests or to the interests that weigh more in our civilisation with the least sacrifice of the scheme of interest as a whole.

In. his ''theory of justice'', 1951 Edition, at page 31, "the law means to balance the competing interests of an individual along with the social interests of the society. " In his work, "Justice According to Law, " he observed:

We come to an idea of maximum satisfaction of human wants or expectations. What we have to do in social control and so in law is to reconcile and adjust these desires or wants or expectations, so far as we can, so as to secure as much of the totality of them as we can.

According to him, therefore, that the claims or interest, namely, individual, physical, social or public interest should harmoniously be reconciled "to the balancing of social interests through the instrument of social control; a task assigned to public law for that matter.

(Emphasis supplied)

51. The Constitution of India, on the other hand in its historical background provided Directive Principles vis-a-vis the fundamental rights to realise social and economic democracy for successful working of- political democracy in which the State is bound to provide to every person in the society equality of opportunity in economic arrangements. Material resources and operation of the economic system shall be so organised as to establish the egalitarian social order. Though Articles 31 and 19(1)(f) of the Constitution accorded to "property" the status as a fundamental right, there emerged conflict between the animation of the founding fathers and the judicial interpretation on the word "compensation" when private property was expropriated to subserve common good or to prevent common detriment.

52. The constitutional history of the interpretation of the power of the Parliament to amend the Constitution under Article 368 from Kameshwar Singh to Kesavanand Bharti to give effect to the directive principles in part IV vis-a-vis the right to property in Articles 19(1)(f) and 31 as well as the interpretation, "compensation" from Ms. Bela Banerji to Banks Nationalisations''s case do establish that the Parliament has ultimately wrested the power to amend the Constitution, without violating its basic features or structure. Concomitantly legislature has power to acquire the property of private person exercising the power of eminent domain by a law for public purpose. The law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate . The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount. The doctrine of illusory amount or fixation of the principles to be arbitrary were evolved drawing support from the language originally couched in the unamended Entry 42 of List III which stood amended by the Constitution 7th Amendment Act with the words merely "Acquisition and Requisition of Property". Nevertheless even thereafter this Court reiterated the same principles. Therefore, the amendment to. Entry 42 of List III has Tittle bearing on the validity of those principles. We are conscious that the Parliament omitted Article 31(2) altogether. However, when the State exercises its power of eminent domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination be must in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law. However judicial interpretation should not be a tool to re induct the doctrine of compensation as

concomitance to acquisition or deprivation of property under Article 300A. This would be manifest from two related relevant provisions of the Constitution itself. Articles 30(1A) and 2nd proviso to Article 31A as exceptions to the other type of acquisition or deprivation of the property under Article 300A.

For acquisition of the property of a minority educational institution, the measure is that the State shall ensure that " the amount fixed or determined under such law" would not "restrict or abrogate the right guaranteed" by Article 30(1). This as simultaneously brought on the Constitution by Section 4 of the Forty-fourth Constitution Amendment Act while omitting Articles 19(1)(f) and 31 from Part III. Equally when the land of a person "within the ceiling limit" and "in his personal cultivation" is acquired, law shall provide "for payment of compensation at a rate which shall not be less than the market value thereof. This was brought by Constitution Seventh Amendment Act. By necessary implication the obligation of the State to pay . compensation for property acquired or indemnification of property deprived under Article 300A or other public purpose is obviated.

(Emphasis supplied)

54. It would thus be clear that acquisition of the property by law laid in furtherance of the directive principles of State policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of just compensation or indemnification to the owner of the property expropriated. It is the very negation of the effectuating the public purpose. Payment of market value in lieu of acquired property is not sine qua non for acquisition. Acquisition and payment of amount are part of the scheme and they cannot be dissected. However, fixation of the amount or specification of the principles and the manner in which the amount is to be determined must be relevant to the fixation of amount. The amount determined need not bear reasonable relationship. In other words, it is not illusory. . The adequacy of the resultant amount cannot be questioned in a court of law. However, the validity of irrelevant principles are amenable to judicial scrutiny.

(Emphasis supplied)

56. The further contention that money value of the rupee from three years preceding May 1, 1960 till date, has considerably been eroded and that, therefore, the fixation of the principle of net annual income of three years preceding the date of vesting, namely 1st May, 1960 is arbitrary and amount so determined is illusory is also devoid of substance. In Achutananda Purohit and Others Vs. The State of Orissa, it was contended that compensation money should be so calculated that the purchasing power of the amount of compensation to be paid on the date of the actual payment will not be less than its purchasing power on the date of vesting. Repelling the contention this Court held that "on the date of vesting which was well over two decades ago, the purchasing power of rupee was much higher than its present value. It is more or

less the world phenomenon that the erosion is value of unit of currency has been taking place. But this inevitable devaluation due to inflationary trends does not affect the quantum of compensation prescribed by the statute for the purpose of allowing compensation in rupee long ago is the same as the rupee of today, although for the purpose of market and cost of living, the housewives answer may be different. Law is more time blind. Therefore, the loss of rupee value is not relevant consideration to adjudge the principle laid by the statute. Given acceptance to the contention renders every status ultra vires since by the nature of the litigation that the time lag inevitably intervenes and rupee value, during the interregnum gets eroded and every Act thereby becomes, on its account, unworkable. In normal acquisition, the principle of depletion of rupee value has repeatedly been held to be not relevant to determine market value. The contention, therefore, is rejected.

It is next contended that the Act and the related provisions provided different modes of compensation than the one provided in Sub-section (4) of Section 69A of the Code and that, therefore, it is discriminatory, violating Article 14 and unfair procedure offending Article 21. We find no substance in this contention. It is true that different Acts provide different principles to determine the amount payable to the deprived owner. The principle of average of three years net annual income received from production of the mines and minerals preceding the date of the vesting is a relevant and germane principle to fix the amount payable to the owner. Comparative evaluation of different principles evolved by each statute may appear to be different and prima facie to be discriminatory from each other, but comparative analogy would not furnish satisfactory test to declare a national principle determined by the statute to be discriminatory. It is- seen that the principle bears just relation to the object of determining the amount or compensation payable to the owner and the principle of average of three years net annual income is a reasonable classification having relation to the object of modification of the existing rights and extinguishment thereof. Section 69A (4) of the Code is, therefore, valid. So it is unassailable under Article 14. The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300A giving effect to the directive principles are not concerned in these appeals of the effect of mining and mineral lease or leases granted by the Appellants to third parties, since that question was neither convassed in the High Court, nor any factual foundation laid before us. We decline to go into that question. For well over twelve years the Appellants worked the mines etc. by obtaining stay of operation of law and had appropriated the mines or minerals or quarries from the respective lands.

46. After giving our careful consideration to the rival submissions advanced before us by the learned Counsel for the parties, we are of the considered opinion that the petitioner has not been able to assail the validity of the legislation successfully. Perusal of re-enacted Section 5 plainly demonstrates that it provides for payment of an amount equivalent to the net income, after deduction of all lawful expenses incurred by the petitioner in the management,

accrued to him during the five financial yeaRs. preceding immediately the publication of this Act in the Official Gazette, in five equal instalments. The amount is payable on the first day of June every year for a period of five years from the appointed day and bears interest at the rate of 10% per annum from the date the amount becomes payable till the date of payment. Under the old Section the petitioner was entitled to an amount equivalent to 1/5th of the net'' income, after deduction of all lawful expenses incurred by him in the management, acrued to him during the financial year 1988-89. The amount was payable on the first day of June every year for a period of five years form the appointed day and carried interest at the rate of 9% per annum from the date the amount became payable till the date of payment. The petitioner is entitled to hearing before deductions are made from the total income of the forest for these years.

47. The Full Bench of this Court found that the amount accruing to the petitioner was not reasonable having been calculated on selection of a lean year. One of the reasons for recording this finding was the long association of the petitioner and his fore-fathers in the forest, proper management and various other developmental activities undertaken by him during the period of his management, but it was clearly found that the forest belongs to the Government and the petitioner has no proprietary interest in it. He is managing the forest against realisation of 3/4th share of income some part of which was to be spent towards the maintenance of the forest which included planting of new trees in accordance with the terms of management grant and working plans of the Forest Department. The right of management was termed "property" but it canot be valued on the principles applicable to property stricto sensu. More over, as noticed above, the value of the trees pointed out by the petitioner, cannot be made the basis for paying him compensation. These trees had to be planted by the petitioner since it was a condition for management-, that is why, he was realising 3/4th share of the income from the forest. We may reproduce here-in-below the chart depicting the gross revenue, revenue after deduction of grazing fee, 3/4th share 1 and 1/4th share for years 1984-85 to 1991-92 produced by the State:

Year Gross Revenue, 3/4th 1/4th Revenue after share of share of deduction Col. 3 Col. 3. of grazing fee. --- 1. 2. 3. 4. 5. --- 1984-85 33.35 28.86 21.85 7.22 1985-86 49.72 45.66 34.26 11.42 1986-87 83.47 79.48 59.61 19.87 1987-88 84.97 81.22 60.92 20.30 1988-89 66.09 66.04 49.53 16.51 1989-90 74.90 74.85 56.14 18.71 1990-91 68.88 68.80 51.60 17.20 1991-92 94.93 94.82 71.11 23.71

48. It is apparent from this chart that five financial years preceding immediately the publication of the Act in the Official Gazette have been selected. The Act was first published on September 23, 1992 but subsequently the publication was

stayed by this Court on September 25, 1992. Five best years have been selected after taking into consideration the opinion of the Full Bench decision of this Court directing averaging some years or the best year or some other well-known method for determining the compensation. The explanation of the State for adopting this method, reproduced above in the contention of Shri B. Dutta, is quite satisfactory and it is not necessary to report this explanation here.

49. The amount becoming payable to the petitioner by virtue of the re-enacted provision is quite fair and reasonable assuming that Article 300A still protects the rights of citizen to claim compensation. It is not possible to hold that it is no compensation or it has been determined arbitrarily or unreasonably and the petitioner is entitled to market value of the forest in question.

50. No other point was urged by any of the learned Counsel for the parties.

51. Consequently, this writ petition fails and is accordingly dismissed. The parties are, however, left to bear their own costs.

