
(1989) 02 KAR CK 0010

In the Karnataka High Court

Case No : W.A. No's. 1983 of 1984 and 143 of 1985

Management of Thungabhadra Sugar Works Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 21-02-1989

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 107 (i), 63 (8), 79 A, 79 B, 80

Citation : (1989) ILR (Kar) 897

Hon'ble Judges : Prem Chand Jain, C.J; Shivashankar Bhat, J

Bench : Division Bench

Advocate : B.T. Parthasarathy, for the Appellant; S.V. Jagannath, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J

1. These two appeals are filed against the order of a learned Single Judge in the Writ Petition filed by the appellant in W.A.No. 1938/84 (who will hereinafter be referred as "the Company"). The other appeal (W.A. No. 143/85) is by the State of Karnataka.

2. In the Writ Petition, the Company sought for the quashing of the two orders of the Special Deputy Commissioner (Annexures J and K) whereby the Special Deputy Commissioner in the exercise of his power u/s 79B of the Karnataka Land Reforms Act, 1961 (for short, called "the Act") declared an extent of 2685 acres 19 guntas of land held by the Company to be surplus lands u/s 79B of the Act and ordered the same to be resumed to Government. The Special Deputy Commissioner held that the Company was barred from holding any agricultural land u/s 79B of the Act, except 50 acres of agricultural land for seed and research purpose u/s 63(8) of the Act. The Company was given the option to retain the lands upto the permitted limit.

3. According to the petitioner, an extent of 1503 acres and 11 guntas of

Government land was granted to it for sugarcane cultivation for a period of 30 years. In addition to this, the Company purchased 2282 acres and 8 guntas of land belonging to private parties. It is stated in para-6 of the Writ Petition that out of this total extent of 3785 acres 19 guntas of land, nearly 1415 acres turned out to be kharab land and in spite of the best efforts of the petitioner, those lands were found to be uncultivable. Originally the Company filed a declaration u/s 66 of the Act, but It got it cancelled and filed a fresh declaration under the provisions of Section 79B of the Act. Section 79B prohibits holding of agricultural lands by certain persons, on and from 1-3-1974, except as otherwise provided in the Act. A "Company" comes within the purview of the prohibition of Section 79B, unless any exception is found in the other provisions of the Act. Further, every such person falling within Section 79B has to furnish to the Tahsildar a declaration containing the particulars of the lands held by such a person. On receipt of the declaration and after holding an enquiry as prescribed, the Tahsildar has to send a statement containing the prescribed particulars etc., to the Special Deputy Commissioner who is to declare by notification that such lands held by the person shall vest in the State Government free from all encumbrances.

4. As stated above, the Company had filed a declaration u/s 79B. The Tahsildar, after holding an appropriate enquiry, sent his report to the Special Deputy Commissioner, who made the impugned orders Annexures "J" and "K" on 15th June, 1979. These orders were attacked by the Company on the following grounds:

(i) The lands which were granted by the Government on lease, belong to the Government and therefore by virtue of Section 107 of the Act, except Section 8, no other provision in the Act shall apply to those lands.

(ii) u/s 63(8) of the Act, only the Divisional Commissioner could have made an order in respect of the Company, which is a sugar factory and the Special Deputy Commissioner had no jurisdiction to make the impugned orders.

(iii) The Special Deputy Commissioner did not apply his mind to the report of the Tahsildar and that, he passed the order in a mechanical manner without considering the pleas raised by the petitioner.

(iv) The lands which are kharab cannot be treated as agricultural lands and therefore they are outside the purview of the Act.

5. The learned single Judge held that: (i) provisions of Section 107 were not applicable to the land leased by the Government and the Company being a sugar factory is governed by Section 63(8) which limits the extent of land that can be held by a sugar factory; (ii) jurisdiction of the Special Deputy Commissioner u/s 79B was invoked by the Company itself and actually the impugned orders were the result of a proceeding u/s 79B, which has nothing to do with a proceeding u/s 66 nor with a proceeding u/s 63(8); (iii) the Special Deputy Commissioner has not considered as to whether the lands were subjected to mortgage etc., and

thus has not considered the question whether the protection of Section 81 was available to the lands held by the Company; the Special Deputy Commissioner should have considered whether the interest of the petitioner Company in the lands in question, which had been mortgaged to the State Bank of Mysore are saved by the provisions of Section 81; if the lands were thus mortgaged, the provisions of Section 79B of the Act would not be applicable; (iv) the Special Deputy Commissioner should have considered whether the kharab lands held by the Company were agricultural lands or not, and, whether they are resumable lands u/s 79B. Consequently the Writ Petition was allowed and the impugned orders/notifications were quashed and the matter was remitted to the Special Deputy Commissioner for fresh consideration of the report of the Tahsildar in the light of the observations made in the order of remand. The Company was permitted to adduce any further evidence, before the Special Deputy Commissioner, to show that the lands in question do not fall within the definition of "lands" as defined in Section 2A(18) of the Act.

RE. GROUND (i):

6. In the appeal filed by the Company, Sri Parthasarathy, learned Counsel for the appellant, contended that the learned single Judge should have upheld the plea of the Company that Section 107 of the Act apply to the lands held by the Company on lease from the Government, since those lands belong to the Government, while Sri S.V. Jagannath, learned Government Advocate, contended that the provisions of Section 107, on a harmonious construction of its various provisions can lead only to the inference drawn by the learned single Judge and that the provisions of Section 107 do not apply to the lands belonging to the Government, but leased by the Government, to a third person (like the Company). Further, it was pointed out that there is a special provision governing the sugar factory as per Section 63(8) of the Act, which will become otiose, if the interpretation of the appellant Company is accepted.

7. To appreciate the rival contentions, it is necessary to refer to the relevant portions of Sections 63, 107 and 110 which are extracted below:

Section 63 "Ceiling on Holding:- (1) No person who is not a member of a family or who has no family and no family shall, except as otherwise provided in this Act, be entitled to hold, whether as land owner, landlord or tenant or as a mortgagee with possession or otherwise or partly in one capacity and partly in another, land in excess of ceiling area."

Section 63(8)(a): "No sugar factory shall hold land except solely for purpose of research or seed farm or both. Where land is held by a sugar factory for such purpose the ceiling area shall be fifty units.

(b) If any question arises whether any land held by a sugar factory is solely used for the purpose of research or seed farm or both, the decision of the prescribed authority shall be final and the land not held for the said purpose shall be deemed to be surplus land and provisions of Sections 66 and 76 shall, so far as

may be, apply to the surrender to and vesting in the State Government of such land. The provisions of this sub-section shall have effect notwithstanding anything contained in this Act."

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

(1) belonging to Government;

(ii) omitted by Act 1 of 79 wef 1-3-74;

(iii) belonging to or held on lease by or from a local authority, an agricultural Produce Marketing Committee constituted under the Karnataka Agricultural Produce Marketing Regulation Act, 1966 (Karnataka Act 27 of 1966), a University established by law in India, a research institution owned or controlled by the State Government or the Central Government or both, the Karnataka Bhoodan Yagna Board established under the Karnataka Bhoodan Yagna Act, 1963 (Karnataka Act 34 of 1963);

(iv) given as a gallantry award;

(iva) granted by the State Government to a Research Institution affiliated to a University established by law in India;

(v) used for such stud farms as are in existence on the 24th January 1971 and approved by the State Government, subject to such Rules as may be prescribed;

(vi) used for the cultivation of linaloe;

(vii) held by the Coffee Board constituted under the Coffee Act 1942 (Central Act No. 7 of 1942) for purposes of research, development or propaganda;

(viii) held by any Corporation owned or controlled by the State Government or the Central Government or both;"

(Provisos omitted)

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

Originally Section 107(1)(ii) provided that nothing in the Act, except Section 8 shall apply to the land held on lease from the Government for a period not exceeding twenty years. This sub-clause was omitted by Karnataka Act 1 of 1979 with effect from 1-3-1974. While Sub-clause (iii) of Section 107(1) excludes the land belonging to or held on lease by or from a local authority etc., Sub-clause (i) excludes from the operation of the Act the land belonging to Government only. According to Sri Parthasarathy, it was unnecessary to have a Sub-clause (ii) similar to the Sub-clause (iii), because once the land belongs to the Government, whoever holds it even on lease will get the benefit of Section 107(1) and

therefore the legislature deleted Sub-clause (ii). It was also contended that the operation of Section 63(8) will not control the wide language of Section 107 since Section 107 which comes after Section 63, categorically states that nothing in the Act except Section 8 shall apply to the lands belonging to the Government. The exclusion provided by Section 107 also excludes Section 63(8) being applied to a land belonging to the Government though held by the Company on lease from the Government. It was further contended that in case the State Government desires to net in such lands also for operation of the Act, Section 110 can be resorted to.

8. To understand the scope of Section 107 of the Act, it is necessary to consider the scheme of the Act itself. The Act contemplates the conferment of occupancy rights on the person holding a land on lease as on 1-3-1974; such lands are to vest in the State Government as per Section 44. The Act also provides for imposition of ceiling on the holding of lands by persons and excess lands are to vest in the State Government again. These surplus lands after applying the ceiling provisions under Chapter IV, are to be disposed of as provided u/s 77 of the Act to various categories of persons such as those belonging to Scheduled Castes and Scheduled Tribes, landless agricultural labourers etc. Similarly, other land vesting in the State Government except those lands in respect of which occupancy rights are to be granted also will fall within the purview of Section 77 for disposal. The language of Section 77 is peremptory and it is not open to the State Government to retain such lands.

9. If the contention of Sri Parthasarathy is accepted, then none of these provisions will be applicable and the lessee from the Government will continue to possess the same during the period of lease, subject to the terms of the lease. On the other hand, if the contention of the learned Government Advocate is to be accepted and a land belonging to the State Government is leased to a third person is held not governed by the provisions of Section 107, other provisions of the Act will be applicable to those lands, leading to several anomalies such as (i) the lessee may invoke the provisions of Section 48A for conferment of occupancy rights, (ii) the lands are to be treated as having vested in the Government u/s 44 of the Act, which will be a superfluous vesting having regard to the fact that the Government has the title to the land all along; (iii) the ceiling provisions will be attracted and the person to whom the land is leased, if holds excess land, the excess land will again vest in the Government, which will have to be distributed u/s 77 of the Act, and (iv) the scope of Section 107(1)(i) which governs the land "belonging to Government" will be unduly restricted and will result in treating a land leased by the Government as the one not belonging to it.

10. The object of the Act is to regulate agrarian relationship, conferment of occupancy rights on tenants, impose ceiling on land holdings etc. The scheme of the Act is that the ownership of the land shall vest in the actual tiller and holding of an agricultural land by a person is limited to a reasonable extent contemplated by the legislature. Purpose is to control and regulate the agrarian relationships

amongst non-governmental persons and limit their holdings. Bearing in mind the above objects sought to be achieved by the Act and its scheme, we have to proceed to understand the scope of Section 107.

Section 107 says that nothing in the Act except Section 8 applies to lands belonging to Government. This is compared with Sub-clause (iii) which covers the lands,--

- (a) belonging to a local authority, etc.
- (b) held on lease or by a local authority etc.
- (c) held on lease from a local authority etc.

11. It was contended by the learned Government Advocate that if the lands held on lease from a Government is also excepted by the provisions of the Act, by its inclusion in Section 107, its Sub-clause (i) would have been worded in the same manner, as the wording of Sub-clause (iii), by stating "belonging to or held on lease from Government." Further, the learned Government Advocate pointed out that as on 1-3-1974, Sub-clause (ii) existed as "held on lease from Government for a period not exceeding twenty years", effect of which was, to declare that nothing in the Act, except Section 8 shall apply to lands held on lease from Government for a period not exceeding 20 years. This clause was omitted with effect from 1-3-1974 by Karnataka Act 1 of 1979. If all lands held on lease from Government were to fall within Section 107 and are to be excepted from the provisions of the Act (except Section 8), instead of deleting Sub-clause (ii), only the words "for a period not exceeding 20 years" would have been deleted. Since the entire sub-clause is deleted with effect from 1-3-1974, it was argued that the intention was not to attract Section 107 to the lands held on lease from Government.

This contention, no doubt, is attractive, but its acceptance depends upon various factors. The statement of objects and reasons to the Bill No. 27 of 1978 leading to this amendment (Amendment Act 1 of 1979) is silent on this aspect [wherein Clause 29 proposed the deletion of the Sub-clause (ii) of Section 107(1)]. If the contention of the learned Government Advocate is accepted, if any other person holds a land on lease from the Government Section 107 would not operate on it and consequently, other provisions of the Act would apply.

12. This prima facie leads to an anomalous result. u/s 44, all tenanted lands vest in Government with effect from 1-3-1974 and u/s 45 read with Section 48A, the tenants could seek occupancy rights over these lands. But Section 44 cannot operate at all here, because, ownership of land was all along with the Government and question of vesting u/s 44 cannot arise once again. If so, consequences flowing therefrom under Sections 45, 48A and other provisions also cannot follow.

13. Having regard to these factors, it is reasonable to hold that the intention of the legislature was not to apply the key provisions of the Act to the lands held on

lease from the Government. The limited operation of the Act on certain governmental leases was obviously found to be unworkable and therefore Sub-clause (ii) was omitted by its deletion retrospectively.

The word "belonging" prima facie means ownership. It has, having regard to the context, other meanings as observed by the Supreme Court in *RAJA MOHAMMAD AMIR AHMAD KHAN v. MUNICIPAL BOARD OF SITAPUR AND ANR.* AIR 1965 SC 1023:

"Though the word "belonging" no doubt is capable of denoting an absolute title, is nevertheless not confined to connoting that sense. Even possession of an interest less than that of full ownership could be signified by that word. In Webster "belong to" is explained as meaning inter alia "to be owned by, be the possession of". The precise sense which the word was meant to convey can therefore be gathered only by reading the document as a whole and adverting to the context in which it occurs."

In *The Borough Municipality of Ahmedabad Vs. The Government of the Province of Bombay*, the word "belong" was held to denote ownership. Government lands, on being granted on lease, still "belong" to the Government. Ownership of Government lands cannot be equated with the ownership of lands of private citizens. The governmental ownership is nothing but public ownership. Leases of such lands are granted, normally, under particular Statutes or statutory Rules; the enjoyment, use and management of such leased lands by the lessees are subjected to, normally, statutory conditions, imposed having regard to the public interest. It is inconceivable that the legislature intended that the Government lands granted on lease, also should be subjected to the rigorous restrictions imposed by the Act. It is reasonable to infer that, when Section 107(1)(i) says that nothing in the Act, except Section 8, shall apply to "lands belonging to Government", the provision covers within its amplitude, even the lands held by third persons, on lease from the Government, thus, confining the provisions of the Act to the extent of the rent, prescribed by Section 8. The contention of the learned Government Advocate is very much influenced by the facts of the present case, rather than, the objectives sought to be achieved by the Act, its scheme and its impact on the ownership rights in agricultural lands.

Since the ownership continues with the Government even after it leases its land, such a land continues to "belong" to the Government, though possession is with the lessee. The word "belonging" here cannot be confined to mean, "in possession of whether as owner or as a lessee."

14, Sub-clause (iii) is not helpful to guide the interpretation of Sub-clause (i). Sub-clause (iii) is worded to cover not only the lands owned by a local authority etc. (i.e., various bodies referred therein), but also, lands leased by them or lands taken on lease by them. Three situations had to be covered.

No hardship results by this interpretation of Section 107(1)(i) as stated above. Except Section 8, no other provision of the Act would apply to the land owned by

Government even when the land is leased to a third person. But, if in a given situation, this would defeat the basic policy underlying the Act, and the situation warrants the application of any other provision of the Act, Government can always invoke its power u/s 110 and withdraw the operation of Section 107 of the Act to the extent necessary and attract the relevant provisions of the Act to such a situation.

15. In the case before us, the main grievance of the learned Government Advocate is, that the ineligibility to hold agricultural land u/s 79B of the Act by an incorporated Company, will be nullified, to the extent of lands held by the Company on lease from the Government if Section 107(1)(i) is attracted to the said situation.

Section 79B categorically states that "except as otherwise provided by this Act", thereby, saving the operation of Sections 107 and 110 of the Act on a situation covered by Section 79B. If the public policy demands that no person referred in Section 79B should hold lands on lease from the Government, the Government has only to invoke, as already observed, Section 110 of the Act or wait for the termination of the lease as provided by the lease agreement or any other law governing such a lease. An interpretation of the law, - which adversely affects the right of a lessee from the Government, who obtained it on lease at a time when admittedly, there was no bar to possess it on lease - cannot be accepted, unless the words of the Statute are clear and unambiguous. No kind of public interest was pointed out by the learned Government Advocate as a reason to accept his interpretation. With utmost respect to the learned Single Judge, we disagree with him on this question.

Consequently we hold that Section 107(1)(i) also operates on the lands belonging to Government but held on lease by other persons on lease from the Government.

16. The impact of this interpretation on the ceiling provision is minimal, in this case. Section 63(8) is a special provision governing a "sugar factory". It bars sugar factories from holding land except for certain purposes. To "hold" a land, means "to be in lawful possession of land, whether such possession is actual or not" [vide Section 2(11) of the Karnataka Land Revenue Act]. This definition is attracted to the words used in the Act by virtue of Section 2(B) of the Act, which reads:

"Words and expressions used in this Act but not defined shall have the meaning assigned to them in the Karnataka Land Revenue Act, 1964 and the Transfer of Property Act, 1882, as the case may be."

Similarly, Section 63(1) also makes it clear that ceiling is "to hold" land either as an owner or as a tenant or as a mortgagee with possession, etc. Therefore, the petitioner Company, here, which is a "sugar factory" cannot take advantage of the provisions of Section 107 of the Act, to exclude the lands held by it on lease from the Government for purposes of computing the ceiling area. The contention

of Sri Parthasarathy is that Section 107, which occurs after Section 63(8) in the Act prevails over the latter, and by virtue of Section 107(1)(i) no other provision in the Act, except Section 8, would apply to these lands. This may be so in other cases. But, where there is a special provision governing a particular case, it has to prevail over the general provision. Section 63(8) is a special provision governing the holding of lands by a sugar factory. Therefore, in the matter of holding agricultural land, in whatever capacity, the sugar factory is subjected to this provision. Consequently we are of the opinion that, the petitioner Company cannot take advantage of Section 107(1)(i) to hold the lands held by it on lease from the Government to the extent in excess of the ceiling provision read with Section 63(8) of the Act.

17. On the second question, as the learned Single Judge has observed, this is a proceeding initiated by the Company u/s 79B of the Act and therefore the petitioner Company cannot now contend that the Divisional Commissioner alone could have passed the order u/s 63(8) of the Act. The subject of the proceeding is not the identification of the land u/s 63(8)(b), but the eligibility of the Company to hold the land u/s 79B of the Act. Section 63(8)(b) which was invoked by Sri Parthasarathy to contend that only Divisional Commissioner can decide the question, is not attracted at all here because no question has arisen whether any land of the Company is solely used for the purpose of search or seed farm or both, as provided by the said sub-section.

RE. GROUND (IV):

18. On the question, whether the Kharab lands are agricultural lands or not is a question of fact to be determined by the authority concerned. It is necessary to point out that the test whether a land is agricultural or not cannot be decided solely from the wide language used in Section 2A(18) of the Act. The language of the said provision is circumscribed by the object for which the land is held on lease as observed by this Court in *BHAMY PANDURANGA SHENOY v. B.H. RAVINDRA AND ORS* 1980 (2) KarLJ 129. in the case of teased lands. If the Company has obtained the lands on lease from the Government for agricultural purposes, it will not be open to the Company to contend that those lands are now non-agricultural. However, whether other lands held by the petitioner Company on purchase from private persons are agricultural lands or not, will have to be decided with reference to various factors and the said question is left open to be determined by the authority u/s 79B of the Act. The failure of the petitioner Company to raise sugarcane by itself will not lead to the inference that the lands are non-agricultural. Agriculture comprehends within its scope several operations and its definition u/s 2A(1) of the Act is an inclusive one.

The learned single Judge has directed a fresh consideration of this question by the Special Deputy Commissioner and we agree with the said direction. The Special Deputy Commissioner has, for his guidance, several decisions of this Court on this question and it is unnecessary to cite them or repeat the principles stated therein.

19. The learned single Judge has made certain observations regarding Section 81 of the Act, relevant portions of which read thus:

81: "Sections 79A, 79B and 80 not to apply in certain cases, - Nothing in Section 79A or Section 79B or Section 80 shall apply to-

(a) the sale, gift or mortgage of any land or interest therein in favour of the Government;

(b) the mortgage of any land or interest therein in favour of -

(i) omitted

(ii) a Financial Institution;

XXX XXX XXX as security for any loan or other facility given by such Society, Bank, Company, Corporation or Board for agricultural purposes;

EXPLANATION: In this clause Agricultural purpose" include making land fit for cultivation, cultivation of land, improvement of land, development of sources of irrigation raising and harvesting of crops, horticulture, forestry, planting and farming, cattle breeding, pisciculture, apiculture, sericulture, piggery, poultry farming and such other activities as are generally carried OB by agriculturists, dairy farmers, cattle breeders, poultry farmers and other categories of persons engaged in similar activities including marketing of agricultural products, their storage and transport and the acquisition of implements and machinery in connection with any such activity;

(c) the sale of any land or interest therein referred to in Clause (b) in enforcement of the said security."

Here, we are concerned with Section 81 read with Section 79B. Section 79B prohibits holding of agricultural land by certain persons. If Section 81 is attracted, then the prohibition imposed by Section 79B to hold the land will not be applicable. In other words, the operation of Section 81 read with Section 79B is to say that the prohibition imposed by Section 79B shall not apply in the cases falling u/s 81. Section 81(b)(ii) excludes the provisions of Section 79B "to the mortgage" of any land or interest therein in favour of a Financial Institution. In the case before us, Section 81 is sought to be applied to the lands which are the subject matter of the mortgage executed by the Company in favour of the State Bank of Mysore. The question arises in the context of consideration is, whether the bar u/s 79B will govern the mortgage executed by the Company in favour of the State Bank of Mysore and by virtue of Section 81, the Company can continue to hold any interest in the said lands? Obviously the answer is that mortgage in favour of the State Bank is not prohibited. But, the question still remains, to what extent the rights of the mortgagee Bank are saved and enforceable and whether the bar u/s 79B against the petitioner Company to hold land is removed or inapplicable by virtue of the said mortgage.

20. We have already held that none of the other provisions of the Act apply to a

land belonging to the State Government but held on lease by the Company. Therefore, Section 79B also would not govern these lands. Hence question of considering Section 81 to those lands does not arise. The problem, pertains to other lands.

Section 79B is applicable to holdings of lands. Section 79B opens with a qualified statement - "except as otherwise provided in this Act". In other words, if there is a specific provision governing a case, to that extent the prohibition u/s 79B will not be applicable. Therefore, to the extent of the total holding saved u/s 63(8), question of applying Section 79B does not arise. It is only in respect of the balance of the extent of lands, the effect of Section 79B has to be examined. In view of the clear language of Section 79B, read with Section 63(8), petitioner Company is not entitled to hold any agricultural land except to the extent permitted by Section 63(8).

21. But the learned single Judge held that effect of Section 81 has to be examined in view of its reference to Sections 79A, 79B and 80. Sections 79A, 79B and 80 either bar or prohibit acquisition, holding or transfer of agricultural lands by or to certain persons. The petitioner Company relies on Section 81(b)(ii) to contend that, to the extent of the lands mortgaged to the State Bank of Mysore Section 79B is not applicable. The learned single Judge also proceeds on a similar assumption. With utmost respect to the learned single Judge, this question is not free from doubt. The language of Section 81 indicates that it withdraws the provisions of Sections 79A, 79B and 80 from certain transactions stated therein. If we understand these provisions (Sections 79A, 79B and 80) as prohibiting or barring certain persons from acquiring or holding the land, it is clear that such a prohibition or bar is removed u/s 81. In other words, those persons, who cannot acquire or hold agricultural land are allowed to do so in the manner permitted by Section 81. In the case before us, it can be said that by virtue of Sections 79A and 79B, the Bank is prohibited from acquiring or holding agricultural land either by way of mortgage with possession or otherwise. It is this disqualification, that is removed and enables the Bank to obtain the mortgage of any land or interest in its favour u/s 81(b)(ii). Therefore, it seems, that, Section 81 has nothing to do with the eligibility or conferment of an eligibility to hold the land by the mortgagor Company. This is one possible view.

Consequences flowing out of Section 79B on a mortgage transaction has to be separately examined in the presence of the concerned Bank; which perhaps may contend for the interpretation given by the learned single Judge, or, contend that the vesting of land in the Government "free from all encumbrances" u/s 79B(3) does not affect the mortgage in its favour, having regard to the words underlined. The position of the creditor Bank in a situation where an individual who mortgaged the land but whose holding is found in excess of the ceiling limit, has also to be examined to understand the scheme of the Act. On vesting of the lands, the amount payable in respect of the lands taken over by the Government is determined u/s 72. By virtue of Section 73(2), provisions of Sections 48B and

50 are attracted to this situation. Section 50 provides for determination of any encumbrance and creation of charge on the amount payable for the vesting of the land. In the case of an individual, (who is not subjected to any ineligibility under Sections 79A and 79B) whose, land is mortgaged to a Bank, but vests in the Government because of the ceiling provisions, the mortgage in favour of the Bank transforms itself as a charge on the amount payable to the individual. It is inconceivable that, a different treatment would be meted out to a mortgage existing in favour of a Bank, just because, the mortgagor is a person falling within the provisions of Sections 79A and 79B. These doubts in our mind cannot be resolved without a proper assistance from the really affected parties. Since the bank is not before us, we refrain from expressing any final opinion on this question and the observations made herein are only to note, the possibility of various contentions on this question.

Since the Special Deputy Commissioner is being directed to decide the question afresh u/s 79B, we are of the opinion that the interest of the creditor can be safeguarded by directing the Special Deputy Commissioner to afford an opportunity to the creditor Bank also to have its say before him. It is made clear by us that we have not expressed any final view as to the scope of Section 79B read with Section 81 of the Act in any manner.

23. The learned single Judge has held that the Special Deputy Commissioner has not applied his mind to all the relevant questions and therefore the matter was remitted for a fresh consideration in accordance with law. u/s 79B(3), the Tahsildar sends a statement containing the prescribed particulars etc., to the Special Deputy Commissioner, who shall by notification declare that such land shall vest in the State Government. A technical reading of this provision, no doubt, does not provide for an enquiry by the Special Deputy Commissioner. This provision drastically affects the right to hold property and therefore a procedure in conformity with the principles of natural justice will have to be read into this provision. If the Tahsildar's report is the final one, it is not understandable as to why the Tahsildar has not been vested with the power to issue the declaration instead of sending the statement to the Special Deputy Commissioner. Therefore, we are of the opinion that the Special Deputy Commissioner should give adequate opportunity to the affected party before deciding to issue the notification u/s 79B(3). We agree with the conclusion of the learned single Judge in this regard and direct the Special Deputy Commissioner to hold an appropriate enquiry, after giving the Company a proper opportunity to put-forth its case, including leading of evidence, if any, and only thereafter the Special Deputy Commissioner shall proceed to issue the notification u/s 79B of the Act. As already observed, the creditor Bank of the Company also shall be heard by the Special Deputy Commissioner on the application and effect of Section 81.

24. In the view we have taken as above, no other consideration arises in the appeal filed by the State and its Officers. The main grievance of these appellants in W.A.No. 143 of 1985 is against the order of remand and the interpretation

given by the learned single Judge to Section 81 of the Act.

25. For the reasons stated above, subject to the observations/directions stated already, both the appeals are dismissed, without any order as to costs.

ORDER ON ORAL PRAYER

Mr. B.T. Parthasarathy, learned Counsel for the appellant makes an oral prayer for certifying cases to be fit ones to appeal to Supreme Court. In our view, no substantial question of law of general importance arises in these cases which may require the decision of the Supreme Court. Consequently, the prayer is declined.

On further request of the learned Counsel, we stay the dispossession of the appellant for a period of 8 weeks from today to enable him to approach the Supreme Court.