
(1991) 01 BOM CK 0048
In the Bombay High Court
Case No : W. P. No. 80 of 1986

Michael Charles D'souza

APPELLANT

Vs

Ganesh V. V. Gaonkar and others

RESPONDENT

Date of Decision : 29-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(a), 229, 235, 300A
Industrial Disputes Act, 1947 — Section 2(j)
Penal Code, 1860 (IPC) — Section 124A
Prize Competitions Act, 1955 — Section 2(d)

Citation : (1991) MhLj 1432

Hon'ble Judges : H. W. Dhabe, J; E. S. Da Silva, J

Bench : Division Bench

Advocate : F. Rebello, for the Appellant; S. G. Dessai, For respondents Nos. 1 to 12 and J. Dias, Advocate-General For respondent No. 16, for the Respondent

Final Decision : Allowed

Judgement

H. W. Dhabe, J.—The petitioner challenges in this Writ Petition the constitutional validity of the Goa, Daman and Diu Legislative Diploma No. 2070 dated 15-4-1961 (Amendment) Act, 1984, for short, "the Amending Act" and also the Rules framed by the State Government under its Notification dated 25-11-1985. He also challenges the allotment of lands on leases to the respondents 1 to 12 made by the respondent No. 16.

2. Briefly, the facts are that the petitioner is a "jonoeiro" of the Comunidade of Pilerne, Bardez. Goa. He made an application on 17-8-1984 addressed to the Lieutenant Governor of Goa for allotment of a plot of land belonging to the Comunidade of Pilerne, known as "God-di-Baim" and bearing lot No. 341 and surveyed under survey No. 53/1. According to the petitioner, he did not and does not own any land. On 21-8-1984, the petitioner received a letter from the Administrator of Comunidades of Bardez, i.e. the respondent No. 14, that he should give a fresh application giving all the particulars as required by Article 329 of the Code of Comunidades as also a site plan of the plot in duplicate.

Accordingly, the petitioner submitted a fresh application on 1-12-1984 for allotment of the plot of land to him which was received in the office of the respondent No. 14 on 4-12-1984. At this stage, it may be stated that the petitioner claimed a plot of land for residential purposes. On 19-2-1985, the petitioner received a letter from the respondent No. 14 inquiring from him as to whether he would be agreeable to make the required infrastructure in respect of the plot. The petitioner communicated to him on 27-2-1985 that he was agreeable to provide infrastructure as required. Accordingly, he requested by his letter dated 17-6-1985 that he should be allotted plot No. 25 of the property "God-di-Baim" comprising lot No. 21 bearing survey No. 53/21.

3. It may be seen that the respondents 1 to 13 had also made applications dated 1-8-1984 for allotment of land to them from the Comunidade of Pilerne. It may also be seen that the respondents 1 to 13 are Government servants and that they had claimed allotment of land under the administrative instructions in force at that time as per which the land could be allotted to Government servants without public auction. The land was allotted to the respondents 1 to 12 on 10-2-1985, on which date the Amending Act which had come into force on 5-1-1985 was in force and as per Article 334A inserted in the Code of Comunidades by the said Amending Act, the land could be granted to the Government servants without auction. As regards the application made by the petitioner, it appears that no final orders were passed upon the said application and the said application is still pending consideration before the appropriate authorities. In the meanwhile, since the respondents 1 to 12 are allotted land for residential purposes without public auction, the petitioner has moved the instant Writ Petition challenging the validity of the Amending Act as well as the allotment of land made to the respondents 1 to 12. Although the respondent No. 13 is joined in this Writ Petition as a party, since the Government has stated in its affidavit that no land is allotted to him, the petitioner does not pursue any grievance in this petition against the respondent No. 13. According to the learned counsel for the petitioner, the petitioner has preferred the instant Writ Petition in his capacity as a "jonoero" of Comunidade of Pilerne and not as a claimant to whom the land is not allotted by the State Government pursuant to the application made by him.

4. In order to appreciate the contentions raised by the petitioner and also the locus standi which the petitioner claims, it is necessary to briefly refer to the history of Comunidades. According to the previous history of the region known as State of Goa, the original residents of the village were known as "Gaoncars" and their holding of the village was known as "Gaoncaria". The Gaoncars were entitled to the shares in the income of the Comunidade of the village which used to manage its affairs. After the Portuguese rule came in Goa, the said system continued but it was regulated by the Code enacted by the Portuguese Government. The said Code was known as Code of Comunidades. It may be seen that there were new settlers who had come to reside in the village and they were given shares in the income of the Comunidade and were known as share-holders.

Their rights were also regulated by the Code of Comunidades.

5. The Code of Comunidades which was enacted in 1933 had undergone changes as a result of many amendments introduced therein. A new Code of Comunidades was enacted under Legislative Diploma No. 2070 dated 7-6-1961 (for short, the Code) which presently governs the rights in any land belonging to the Comunidades. After Goa was liberated and became a part of India with effect from 19-12-1961, the Code of Comunidades dated. 15-4-1961 still governed the rights in land belonging to the Comunidades. The said Code is an existing law by virtue of Goa, Daman and Diu Administration Act, 1962. It will be at this stage useful to refer to the scheme of the relevant provisions of the Code whose original is in Portuguese and its translation made available to us in English may not be free from some mistakes.

6. Chapter I of the Code provides for general bye-laws. It is provided under Article I that the Comunidades or Gauncarias existing in District of Goa shall be governed by the Bye-laws contained in the Code and specially by the private law of each of them. The general law has to be observed in omitted cases. Article 3 provides that each Comunidade shall be composed of: a) "Jonoeiros", b) Share-holders, c) "Jonoeiros" and Share-holders and d) Sharers. Para 1 of Article 3 shows that the part of the annual income to be claimed by the "jonoeiros" would be called Mono" and that of the share-holders would be called "dividend". Article 4 then provides that only "jonoeiros" and share-holders can participate in the profits and losses of the Comunidade and they only are liable for the rights and duties that are guaranteed and imposed upon the components of the Comunidade by the Code. Article 5 then provides that the Comunidades would be under the administrative tutelage of the State according to Rules contained in the Code and their lands can be given on long lease and transformed in the form established in the Code.

7. As regards the powers of the Comunidades, they are contained in Article 30 of the Code. Para 4(f) of Article 30 confers a power upon the Comunidade to decide over the question of long leases, sale or exchange of lands. Para 4(j) of the said Article 30 confers upon the Comunidade the power to decide over generally all the extraordinary acts which are not foreseen in the budget or in the Code as well as all other matters about which it is consulted. As regards the power of the State Government or the Governor General who was there prior to the liberation of Goa and/or the power of the Lt. Governor of Goa who was its administrative head, the relevant Article is Article 153. Para 9 of the said Article 153 confers the power upon the Governor General to grant leases (afogamentos), to authorise the exchange of land of Comunidades and to determine its reversion. Para 10 empowers him to grant long-term leases.

8. The other relevant provisions of the Code so far as the instant Writ Petition is concerned are contained in its Chapter VI relating to permanent leases. Article 324 provides that it is permissible for the Comunidade to give on permanent leases uncultivated land for cultivation purposes as well as for building houses.

Article 326 however places a restriction that no land more than 3 hectares will be given on lease for cultivation and more than 150 square metres for construction of houses. However, for building purposes a bigger area can be given if the applicant so desires but in that event,- he has to submit the plan of the house for the said purpose. Article 329 to Article 335 deal with the allotment of land on leases. Article 329 provides for the petitions to be made to the Governor General to be presented before the respective Administrator of the Comunidades containing the relevant particulars as prescribed therein. Article 330 contains a provision in which the Secretary of the Administration announces the availability of the land for being granted on lease by publication in Government Gazette, a copy of which is sent to the Clerk of the Comunidade for the opinion of the Comunidade and its Managing Body. After the opinion of the Comunidade is forwarded to the Administration, the Administrator has to notify the applicant and the Procurador of the Comunidade to come for appointing the expert for the inspection. He accordingly fixes a date for the said purpose. The appointment of expert is in accordance with the provisions of Portuguese Civil Procedure Code. The third expert is always appointed by the Administrator.

9. Article 332 then provides that the inspection will be presided over by the Administrator with his secretary and will be notified to be present, besides the expert, the applicant, the procurador and the clerk of the Comunidade. After inspection, the experts are sworn in and they then give their opinion on the question whether the land can or cannot be leased. If from the contract it appears that there can be any loss to the Comunidade the opinion of the Comunidade and the Managing Body is taken into consideration. They also give their opinion upon the "foro" to be fixed and all other facts which may influence the final decision. If on inspection it is decided that the land should be given on lease, it is measured and marked out. If it is decided not to grant land on lease, it is open to the applicant to ask for a new inspection within 8 days, with five experts, two to be appointed by the applicant, two by the Procurador of Comunidade and the fifth by the Administrator. Para 5 of Article 332 provides that in the first class talukas, "foro" cannot be less than 6 escudos (equivalent to 1 Rupee) per 100 square metres and in the remaining at the rate of 3 escudos (50 paise). If the plot requested on lease is cultivated, the "foro" cannot be less than the maximum rent in the last 9 years plus 10 per cent. After the inspection is complete, the minutes of the Committee are drawn and signed by all the members present at the meeting.

10. Article 334 which is important for the purpose of this petition provides that all the property asked for on lease would be auctioned publicly without going against Article 327. Article 327, it may be seen, provides that the properties adjoining to residential houses and those marginal to the roads, public ways, local ways or roads between the villages and to the paddy fields cannot be leased for cultivation within the radius of 50 metres. They can however be leased as accesses to houses with maximum width of 5 metres without an auction and with a lease proportional to the one previously fixed plus 50 per cent. The procedure

for auction is also prescribed in Article 324. Normally the land is given to the highest bidder in public auction. However, para 6 provides that in case there are no bidders, the plot will be leased to the applicant for "foro" fixed in the inspection.

11: Article 335 then provides that after the auction is held, the Secretary of the Administration presents the file to the Administrator who with its opinion remits the same to the Directorate of the Civil Administration. The file then goes to the Governor General, i.e. at present, the Governor of the State who considers the request for the allotment of land. After the request is granted the file goes back to the Administrator, who in turn, sends it to the Clerk of the respective Comunidade who registers the order of allotment of the Governor in the concerned book. Steps are thereafter taken to give possession of the leased plot to the lessee, first provisionally after payment of the transference charges as per law and thereafter finally.

12. Article 339 provides for preferences in leasing out land. It is pertinent to see that preference is given to the "Gaoncar" or the shareholder who is a component of the Comunidade in respect of the lease of the land for the purpose of agriculture only and no preference is granted to him in respect of leases for construction of houses. It is further pertinent to see that although preference is granted to him in regard to leases for agricultural purpose, the procedure of public auction laid down in Article 334 of the Code for grant of leases of land is not dispensed with even in his case.

13. It appears that the Government desired that to certain categories of persons the land should be allotted for residential purposes without auction for which initially, the administrative instructions were issued on 29-1-1971 which were amended on 26-9-1973. However, by letter dated 14-2-1979, all the administrative instructions issued from 1970 were withdrawn. The Government re-examined the question and issued fresh instructions. By the letter dated 18-3-1980, the Under Secretary in the Revenue Department informed the Collector, Panaji, Goa, that the Government had examined the scope of Article 30(4)(j) of the Code of Comunidades and has decided that the provisions of Article 39(4)(j) should be invoked for grant of land in public interest for the following categories:

- (1) Public and Religious Institutions;
- (2) Houses to economically weak sections and Scheduled Castes;
- (3) Industrial use;
- (4) Grant to the Government Departments and Local Bodies; and
- (5) Housing for Government Servants and employees of the Comunidades.

14. It appears that the respondents 1 to 3 had made their applications on 1-8-1984 pursuant to the above administrative instructions issued by the State Government incorporated in its letter dated 18-3-1980. It is material to see that

the above administrative instructions in respect of grant of leases without auction came for consideration before this Court in Special Civil Application (Writ Petition) No. 86/1982 (Manguexa R. S. Quencro vs. Union of India and others) decided on 4th October, 1983, in which this Court had taken a view that the administrative instructions cannot override the provisions of the Code which was statutory in nature. It is because of the above judgment of this Court that it appears that the Amending Act was passed by the State Legislature.

15. A perusal of the Amending Act shows that it has come into force on 5-9-1985 after having received the assent of the Administrator of the then Union Territory of Goa, Daman and Diu. Section 2 of the Amending Act added a new Article 334-A to the Code. Article 334-A reads as follows:-

"Notwithstanding anything contained in Article 334, but subject to Article 327, a Comunidade may, subject to such guidelines as the Government, may from time to time, issue, grant on lease land for construction of houses or buildings, without auction, to any of the following categories or for purposes:-

- i) Public, Charitable or Religious Institutions;
- ii) for any scheme of providing housing to economically weaker sections;
- iii) Small scale industrial purposes;
- iv) Government Departments or local bodies;
- v) Co-operative Housing Societies of landless persons;
- vi) Government servants or employees of the Comunidades;
- vii) Landless Jonoeiros;
- viii) Freedom fighters;
- ix) Such other categories or purposes as may be notified by, the Government, from time to time.

16. It is clear from perusal of Article 334-A that notwithstanding the procedure laid down for public auction in Article 334, the Comunidade can grant on lease land for construction of houses or building without auction to any of the categories or for purposes mentioned in the said Article. As per Clause ix), the Government is empowered to add such other categories or purposes as it may notify from time to time. The second proviso to Article 334-A provides that in case of persons belonging to categories vi), vii) and viii) in Article 334-A the further qualification is that they should be residing in Goa for a period of 25 years preceding the date of their application. It may be seen that by the subsequent amendment which came into force on 27-4-1985, the period of residence is reduced to 15 years. The third proviso to Article 334-A provides that no person whose annual income exceeds Rs. 30,000/-or such amount as may be prescribed by the Government would be eligible for the grant of land on lease without auction. The subsequent Amending Act of 1985 referred to above has

also inserted an additional clause i.e. Clause No.(19) in Article 153 of the Code. The said Clause No.(19) empowers the Governor to frame rules for carrying into effect the provisions of the Code.

17. After the said Clause (19) was introduced in Article 153 of the Code, the Administrator of Goa, Daman and Diu has framed Rules thereunder as per the Notification dated 25-11-1985. The relevant rules for the purpose of this petition are rules 2, 3 and 4. Rule 2 restricts the maximum area of the land which can be allotted to any person to 400 square metres. Sub-rule (1) of Rule 3 provides that the applicant to be eligible for the allotment of land should not own any residential accommodation or a building site within the radius of 8 Kms. from the Comunidade from which he intends to take the land on lease. Sub-rule (2) of Rule 3 then provides that the applicant to be eligible for grant of lease of land without auction should not be a person whose annual income from all sources exceeds Rs. 60,000/-. It thus appears that by sub-rule (2) of Rule 3, the limit of Rs. 30,000/- provided by third proviso to Article 334-A has been enhanced to Rs. 60,000/-. Rule 4 requires the bidders in auction who are not the original applicants to swear an affidavit about the requirement of Rule 2 referred to above.

18. The learned counsel for the petitioner has restricted his challenge in the instant Writ Petition to category (vi) and category (viii) of Article 334-A introduced by the Amending Act. Category (vi) relates to Government Servants or employees of the Comunidade and category (viii) relates to freedom fighters. According to the learned counsel for the petitioner, looking to the object and purpose of the Amending Act, there is no rationale for granting leases of land to Government Servants or employees of the Comunidade or the freedom fighters who are not landless. The averments in this regard are contained in paragraphs 16 and 17 of the petition. He has also pointed out in the said paragraphs that for making an application what has to be satisfied under the Rules is that the applicant should not own any residential accommodation or a building site within the radius of 8 Kms. from the Comunidade from which he intends to take the land on lease and should not be having annual income from all sources exceeding Rs. 60,000/ as provided in the Rules. Further, according to him, so far as "joneiros" who are the components of the Comunidade are concerned, although they have interest in undivided property of the Comunidade, they are excluded from making an application unless they are landless.

19. It is then alleged in the petition that neither Article 334-A nor the Rules framed by the Government provide for determining the market value of the land. The submission is that if the land is allowed to be granted without auction, it can be leased out for a value much less than the market value with the result that the income of the Comunidade would adversely be affected. It is to be emphasised that the land belongs to the Comunidade and the "joneiros" and share-holders are entitled to share of income from the Comunidade which would mean that their share would also adversely be affected if the land does not fetch

its proper market value, if not more which is the object of leasing out the land by public auction. For all these reasons, it is contended on behalf of the petitioner that the lease of land without public auction to the categories (vi) and (viii) of Article 334-A introduced by the Amending Act is arbitrary, unreasonable and discriminatory and the said provisions are therefore liable to be struck down under Article 14 of the Constitution.

20. In support of his submission, the learned counsel for the petitioner has relied upon the following decisions: *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, *State of Gujarat and another vs. The Arvind Mills and others*, AIR 1974 SC 1310, *In Re: The Special Courts Bill, 1978*, *Vidarbha (Rent Control) Bhadekaru Sangh, Akola and Another etc. Vs. State of Maharashtra and Another*, an unreported decision of this Court (Goa Bench) in Writ Petition No. 41 of 1983, *Manohar S. Prabhu vs. Union of India* with Writ Petition No. 42 of 1983, *Babli S. Naik vs. Goa, Daman and Diu Housing Board and others*, rendered on 26-4-1984. In support of his submission that for satisfying the requirements of Article 14, grant of lease of land should ordinarily be by public auction, the learned counsel for the petitioner has placed his reliance upon the judgment of the Supreme Court in *Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation*. There is an intervention in support of the petition. The intervener has sought to rely upon the decision of this Court in the case of *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, for his submissions. The view taken in the above decision is however reversed by the Supreme Court in *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*.

21. Before we proceed to consider the challenge of the petitioner under Article 14 of the Constitution, it is necessary to state that the petitioner has not challenged the legislative competence of the State Legislature to enact such a law which is clearly enacted pursuant to Entry No. 18 in List II i.e. the State List in the Seventh Schedule of the Constitution. It must be seen that several inroads have been made into the rights of the original Gaoncars in the collective ownership of the land in the village, initially by the regulations made by the then Portuguese Government from time to time, and thereafter, by the State Legislature. It has further to be seen that Article 31 which conferred a fundamental right in relation to acquisition of private property was deleted by the Constitution (Forty-fourth Amendment) Act, 1978, with effect from 20-6-1979 and instead by the same Amending Act, Article 300-A was inserted in the Constitution outside the Chapter on fundamental rights. Article 300-A provides that no person shall be deprived of his property save by authority of law.

22. It is not necessary for us to consider the effect of Article 300-A of the Constitution in this petition because the grievance made by the petitioner that the land leased out without auction would not fetch its market value does not survive for consideration, because the learned Advocate General appearing for the State has made a statement before us that the market rate is ensured to the

land leased without auction by obtaining information of prevalent market rates from the Mamlatdar. In paragraph 8 of the affidavit filed on behalf of the State, it is stated that the rate of land is fixed as provided in the Code and to ensure proper supervision and control in the interest of the respective Comunidade, the date of prevalent market rates is also obtained from the Mamlatdar.

23. As already pointed out above, Article 332 provides the normal procedure for fixation of the value of the land by the Inspection i.e. the Committee presided over by the Administrator. It is clear from para 8 of the affidavit of the Government that the said Committee has to take into consideration the market price of the land by obtaining relevant data, if necessary, from the Mamlatdar while giving the land on lease without auction. It may be seen that when the land is leased out by auction as provided in Article 334 the price of the land fixed by the Committee under Article 332 is an upset price below which the land in question cannot be auctioned under Article 334. It has also to be seen that Article 334-A empowers the State Government to issue guidelines from time to time for grant of lease of land thereunder for construction of houses or buildings without auction. It appears that except as regards the data of the prevailing market rates to be obtained from the Mamlatdar, there are no other guidelines or rules issued by the State Government regulating the grant of land on lease without auction under Article 334-A of the Code. In the absence of any such guidelines or rules, it is clear that the procedure laid down in Article 332 would be applicable for the determination of the price of the land to be leased without auction. It is, however, clear that the Committee under Article 332 has to take into consideration the market price of the land as per the guideline of the State Government referred to in para 8 of its return issued for ensuring the market price of the land. Since the market value is intended to be ensured for lease of the land under Article 334-A of the Code, the submission that the income of the Comunidade and the shares therein of its components would adversely suffer because the competitive price through public auction is lost, loses its significance and force to challenge the validity of Article 334-A on that ground under Article 14 of the Constitution.

24. Turning now to the principal contention raised on behalf of the petitioner, it has to be seen that the principles about rational classification under Article 14 of the Constitution are well settled. The case of *Ram Krishna Dalmia vs. Justice Tendolkar*, AIR 1958 SC 538, is a classic case on Article 14 of the Constitution. The principles in regard to classification under Article 14 are contained in paras 11 and 12 of the judgment. It is well established that while Article 14 forbids class-Legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Statute in question. The question which has primarily to be examined in the instant case is what the

object of the Amending Act is and whether the classes carved out for special treatment and in particular categories (vi) and (viii) under Article 334-A of the Code have nexus with the object which is sought to be achieved by the said Amending Act.

25. It is well settled that the object of the enactment can be gathered from its objects and reasons, its preamble and its provisions also. The other relevant material including the affidavits of the State can also be taken into consideration for ascertainment of the object of the enactment. In examining the object of the Amending Act we may first look into the objects and reasons of the said Act which are appended to its Bill. The said objects and reasons are as follows:-

"In the past, from 1970 onwards, many grants of Comunidade land have been made based on the guidelines issued by the Government from time to time. Those guidelines had been issued with the object of giving of facilities in allotment of land without auction for the purpose of construction of houses and buildings. It is felt that those guidelines should be incorporated in the Code of Comunidades itself. The present Bill seeks to achieve this objective.

The present Bill also seeks to enable a Comunidade to grant land, without auction, for specified purpose or to specified bodies for construction of houses."

26. It appears from the above objects and reasons of the Amending Act that it was enacted to incorporate guidelines issued by the State Government from time to time with the object of giving facilities in allotment of land without auction for certain purposes or to certain bodies for construction of houses and buildings. We have already pointed out that this Court had held in an unreported judgment cited supra that the guidelines in this regard issued as administrative instructions by the State Government cannot override the provisions of the Code which is statutory in nature. It appears that it is for this reason that a statutory status is accorded to the guidelines in this regard by the Amending Act which inserts in the Code Article 334-A incorporating provisions for the grant of land on lease without auction for certain purposes and to certain bodies for construction of houses and buildings.-

27. As it is not clear from the statement of the objects and reasons themselves as to why the facilities in allotment of the land in auction for the purpose of construction of houses and buildings were sought to be given to certain bodies or for certain purposes by the State Government, it is necessary to look into the administrative instructions in this regard which incorporate these guidelines. A perusal of the guidelines incorporated in the letter of the Government dated 18-3-1980 would show that the land was sought to be allotted to certain categories and for certain purposes in public interest. However, the said administrative instructions providing for lease of land in public interest without auction could not override, as held by this Court in the unreported judgment cited supra, the statutory provisions of Article 334 of the Code which envisages only the procedure of public auction for grant of land on lease, whether in public

interest or not. It has to be seen that there is no provision in the Code for the grant of land without auction. It is for this reason that Article 334-A is inserted in the Code by the Amending Act.

28. Public interest is thus the guiding principle behind the enactment of Article 334-A inserted in the Code by the Amending Act. The expression "public interest" has different shades of meaning in different contexts. The question, therefore, to be considered in the context of the categories like categories (vi) and (viii) of Article 334-A would be what public interest would be served by granting lease of land without auction to the persons belonging to the said categories for construction of houses or buildings. In examining this question, it has to be seen that when the land is granted by auction it may not be possible for the needy persons to get the land, although their need for residential or for building purpose is genuine because in the auction, it is the highest bidder who may, whether he actually needs the land or not, get the land. Thus, by the process of auction it is only the people with money power who would get as much land as possible in public auction without there being any genuine need for the same whereas the needy persons with meagre resources would not be able to get any land for their genuine housing needs. The State Government has regulated the grant of land on lease keeping in mind the limited availability of the land and the growing need of the people for the same for their housing needs. Providing land at suitable rates to the needy persons who cannot afford to bid in public auction is the purpose behind Article 334-A introduced by the Amending Act.

29. As regards the categories (i), (iii) and (iv), it is clear that the public interest is sought to be achieved by granting land to religious or charitable institutions at suitable rates without auction or for the purpose of small-scale industries. As regards the categories ii, v, vi, vii and viii in Article 334-A, the land is sought to be made available on lease for construction of houses to the individuals who cannot afford to bid in the public auction. The above object is sought to be achieved by laying down the income limit in the third proviso to Article 334-A of the Code.

30. Apart from the consideration of their income which shows their inability to bid in public auction, another facet of public interest in grant of land on lease without auction to the individual persons covered by the above categories would be that such benefit should be extended to such needy persons in the said categories who are landless. Otherwise, it would result in enrichment of these persons at the cost of the Comunidade which owns the land and which will be deprived of its competitive income which it earns in public auction. It has to be emphasised that the land does not belong to the State but belongs to the Comunidade whose income suffers if the land is not sold by public auction.

31. Therefore, as regards the individuals, the public interest by providing them land on lease without auction for construction of houses can only be said to be served if the individuals concerned are landless because it cannot surely be the

purpose of Article 334-A of the Code to grant additional land to those who have already land and buildings and houses which would not therefore serve any public interest. The public interest as envisaged by Article 334-A can be served only if the benefit can be extended only to such categories of individuals who need land because they own no land for building their houses. In category (v) relating to Co-operative Housing Societies and category (vii) relating to "jonoeiros" the intention of the Legislature is made clear by expressly using the word "landless" therein. Although the said expression "landless" is not used in category (ii) relating to economically weaker sections, the said category itself conveys the meaning or at any rate it is implicit in the same that it is of persons who are landless. Categories (vi) and (viii) cannot, therefore, have any other purpose but to serve the interest of only those who are landless. However, the said categories are not happily worded in the sense that there is no expression "landless" used in the said categories. It is for this reason that the petitioner has assailed the said categories as arbitrary, discriminatory and violative of Article 14 of the Constitution.

32. The learned Advocate General appearing for the State has fairly submitted before us that the purpose of enacting Article 334-A by the Amending Act is to provide land to the landless and if the categories (vi) and (viii) are construed to mean that they cover such persons who are not landless, the enactment of the said categories would be wholly arbitrary and discriminatory. He has, therefore, urged before us that in order to save these categories from being rendered invalid, we should read them down so as to cover only categories of Government servants or employees of the Comunidades or freedom fighters who are landless. The learned counsel appearing on behalf of the respondents 1 to 12 has however contended before us that the classification made in categories (vi) and (viii) is valid and even though the persons belonging to the said categories may not be landless still they would be entitled to get the land under Article 334-A without auction. In support of his submission, the learned counsel appearing for respondents 1 to 12 has relied upon the recent judgment of the Supreme Court in the case of *Shashikant vs. Union of India*, AIR 1990 SC 2114.

33. We shall first consider the submissions made on behalf of the respondents 1 to 12. As regards the judgment of the Supreme Court relied upon on behalf of the respondents 1 to 12 cited supra, it may be seen that the constitutional validity of clause (c) inserted in section 10 of the Income Tax Act, 1961 by the Finance Act, 1987 was under challenge in the said judgment. As per the said clause 10(c) if the payment was received by an employee of a public sector company at the time of his voluntary retirement in accordance with a scheme which the Central Government may, having regard to the economic viability of such Company and other relevant considerations, have approved in this behalf, the said payment was not to be included in the total income of such employee, thus resulting in grant of tax exemption. The petitioner who belongs to private sector company challenged the said clause (c) on the ground that it makes invidious distinction between public sector and private sector employees in the

matter of taxation and therefore, it amounts to arbitrariness and unreasonableness. In dealing with the said contention, the Supreme Court has held in para 35 of its judgment that the Government or the Public Sector Undertakings have been treated as a distinct class separate from those in private sector and the fact that the profit earned in the former is for public benefit instead of private benefit provides an intelligible differentia from the social point of view which is of prime importance for the national economy. It thus held that there is intelligible differentia between the two categories which has rational nexus with the main object of promoting the national policy or the public policy. It has then held that after taking into consideration the economic viability of the public sector company, the benefit is sought to be conferred upon its employees who, as pointed out in para 36 of the judgment, have a lower economic status as compared to their counterparts in the private sector for which reason the benefit of tax exemption is granted to them u/s 10(c) at the time of their voluntary retirement.

34. Although the Government employees or the employees of the Comuni-dade or the freedom fighters covered by categories (vi) and (vii) in Article 334-A of the Code may on the basis of their intelligible differentia form distinct classes, the question which arises for consideration in the instant writ petition is whether they have rational nexus to the object sought to be achieved by Article 334-A introduced by the Amending Act. As already pointed out, Article 334-A is enacted to serve public interest of providing land on leases without auction for construction of houses and buildings to such categories of persons who cannot bid in public auction and public interest in granting land to such individuals would also mean that they are needy in the sense that they own no land, building or houses. If the persons belonging to the categories of classes (vi) and (viii) already own land or buildings or houses, no public interest is served by granting them the benefit of getting land without public auction. In fact, it would then amount to their enrichment without being required to bid in public auction and in that sense the said provisions would become arbitrary and discriminatory. The said classification would then have no rational nexus with the object sought to be achieved by Article 334-A introduced by the Amending Act.

35. As regards the class of freedom fighters covered in category (viii), it has to be seen that for their political suffering and sacrifice during the freedom movement they formed a separate class by themselves and can be granted certain concessions by the Government looking to their suffering and sacrifices. In fact, because of devotion of their whole time to the freedom movement, they and their families have suffered. In such cases, if the persons belonging to this category of freedom fighters are landless and have no houses of their own to live in. the benefit extended to such categories cannot be said to be arbitrary, unreasonable or discriminatory. However, if they already own land, building or houses then again in their cases also there would be no rational nexus to the object sought to be achieved by the enactment of Article 334-A by the Amending Act.

36. It is not enough for the purpose of Article 14 of the Constitution that there is a distinct class carved out on the basis of intelligible differentia but further it must have a rational nexus to the object sought to be achieved by the impugned enactment. As shown above, the judgment of the Supreme Court in the case of *Shashikant vs. Union of India*, cited *supra* satisfies both these tests whereas in the instant case if the categories (vi) and (viii) or Article 334-A of the Code are interpreted to include also those who own land, buildings or houses, as urged on behalf of the respondents 1 to 12, the second requirement of Article 14 viz. the class must have rational nexus with the object sought to be achieved by the impugned enactment would not be satisfied making the said categories vulnerable under Article 14 of the Constitution.

37. In considering the challenge under Article 14 of the Constitution, it may also be seen that so far as the landless are concerned, the benefit of getting the land for houses or buildings without auction is granted by Article 334-A upon all of them, whether in employment or not, the only requirement for them being that they should form a Co-operative Society for the said purpose. See category (v) in Article 334-A which covers Co-operative Housing Societies of landless persons. It appears that although the individuals covered by categories (vi) and (viii) in Article 334-A of the Code can also fall under its category (v) provided they form a Co-operative Society and are landless it appears that they are included as separate categories and are not required to form Co-operative Society because they can be authentically identified as a class without being required to form Co-operative Society for the said purpose.

37A. However, if by their separate categorisation under clauses (vi) and (viii) in Article 334-A it is intended to mean that they cover the individuals owning land, buildings and houses also, such a classification will amount to invidious discrimination amongst the persons covered in category (v) and also category (vii) who being components of the Comunidade can claim better rights and the persons covered by these categories (vi) and (viii) in Article 334-A.

38. The next question which arises for consideration is whether, as urged by the learned Advocate General, in the absence of the word "landless" in categories (vi) and (viii) of Article 334-A of the Code, we can read down the said categories to mean the landless Government servants or servants of the Comunidade and the landless freedom fighters. The learned Advocate General has brought to our notice the judgment of the Supreme Court in the case of *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, , in support of his submission that the provisions of categories (vi) and (viii) can be read down. The principles of interpretation of Statutes are discussed and considered at length in the said judgment. It is observed by the Supreme Court in para 6 of the above judgment that the words are but mere vehicles of thought. They are meant to express or convey one's thought. Generally, when a person's words and thoughts coincide, no problem arises but no infrequently, they do not at which time the question of construction of the written words arises. According to the Supreme Court, the

real basis of the so-called golden rule of construction that where the words are plain and unambiguous effect must be given to them is that the Legislature intended what the plain words say and therefore, what is of paramount importance is the intention of the Legislature and not the plain words. It is, therefore, held by the Supreme Court in the above case that the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed and then strive to interpret the Statute so as to advance its object and purpose. In doing so, wherever necessary the Court may even depart from the rule that the plain words should be interpreted according to their plain meaning. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of law, the Court is well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary (*italics ours*).

39. The following passage from Lord Denning's judgment in *Sea-ford Court Estates Ltd. vs. Asher*, (1949) 2 All.ER, 155 on purposive construction has been cited with approval in many judgments of the Supreme Court including the judgment cited *supra*:-

""Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity... A Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a construction of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written words so as to give force and life to the intention of the Legislature. Put into homely metaphor, it is this : A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the contexture of it they would have straightened it out? He must then do what they would have done. A Judge should not alter the material of which the Act is woven, but he can and should iron out the creases".

40. The learned Advocate General has then urged before us that to save the impugned provisions in the instant case from the invalidity we can if necessary read the word "landless" in the said category. He has then drawn our attention to another judgment of the Supreme Court in the case of *Sunil Batra Vs. Delhi Administration and Others* etc., in which it is observed in para 50 of the judgment that new legislation is best solution, but when law-makers take for too long for social patience to suffer, Courts have to make-do with interpretation and carve on wood and sculpt on stone ready at hand and not wait for far away marble architecture.

41. The learned Advocate General has thus strenuously urged before us that looking to the object and purpose of enactment of Article 334-A by the Amending Act and to save the same from being rendered invalid on the touch stone of

Article 14 of the Constitution, we should read down the wide phraseology in categories (vi) and (viii) thereof to cover those who are landless. In fact, according to him, the intention of the Government also was to provide the land to the landless under the said categories. In support, he has drawn our attention to para 10 of the instructions issued by the Government on 4th July 1986 i.e. after the Amending Act was passed. In para 10, the guideline laid down by the Government is that with regard to the allotment of land without auction if the person concerned is already having a house site purchased or a ready built house other than a joint family property or he or she got a plot in the name of the spouse, such cases may not be considered.

42. On the other hand, the learned counsel for the petitioner has placed reliance upon the recent judgment of the Supreme Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . In particular, he has drawn our attention to the judgment of Sawant, J. and Ramaswamy, J. upon the scope and applicability of the doctrine of reading down. It may be seen that clause (b) of Regulation 9 of the Delhi Transport Authority (Conditions of Appointment and Service) Regulations, 1952 which provided for a simple termination of permanent employees of the Corporation by the notice without assigning any reason was under challenge in the said case on the ground that it was violative of Article 14 of the Constitution. One of the arguments in support of maintaining the rule was that it should be read down so that the termination of permanent employees can be done for reasons after compliance with the principles of natural justice. The question was whether such a requirement could be read in the said provision. It is in that context that the majority view in the said judgment was that such a requirement cannot be read in the existing Regulation which would involve lot of re-casting of the rule. However, even according to Sawant, J. (see para 228), a provision can be read down to save it from being struck down as unconstitutional. Similar view is also expressed by Ramaswamy, J. in his judgment in the above case.

43. In appreciating the rival submissions on the question whether clauses (vi) and (viii) of Article 330-A of the Code can be read down so as to save them from being invalidated on the ground of unconstitutionality, it would be useful to notice some of the judgments of the Supreme Court so as to have an idea in which category of cases or which expressions have been read down in order to give force and life to the intention of the legislature or in order to save the provision from being rendered invalid. In R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), , the question of interpretation of the definition of the expression "prize competition" defined in section 2(d) of the Prize Competition Act was under consideration of the Supreme Court. The said definition was worded in wide terms and there was nothing in its wording to limit it to a competition in which success does not depend to any substantial extent on skill but on chance. The Supreme Court has, however, held that looking to the object of the said Act, the definition of the expression "prize competition" had in view such competition as was gambling in nature and no other.

44. In *Kedar Nath Singh Vs. State of Bihar*, , the validity of section 124-A of Indian Penal Code which defines an offence of what is known as sedition was under challenge on the ground that it infringed the fundamental right of freedom of expression guaranteed under Article 19(1)(a) of the Constitution. The words used in section 124-A, Indian Penal Code were wider and unqualified. However, looking to the object of punishment for offence of Sedition, section 124-A was read down and was construed to mean that the words, spoken or written are seditious within the meaning of section 124-A of Indian Penal Code when they are pernicious or have a tendency to harm public order.

45. In case of *Sunil Batra Vs. Delhi Administration and Others etc.*, , the question was whether a prisoner under sentence of death should be confined in a cell apart from the other prisoners. The submission made was that he should be confined in solitary confinement but it was read down to mean that he should be kept in a separate cell but one which is not away from the other cells.

46. In the case of *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, the question was about construction of the definition of the word "industry" in section 2(j) of the Industrial Disputes Act. Although the definition of the expression "Industry" given in section 2(j) of the above Act was very wide, the Supreme Court has held that looking to the object of the enactment, the said definition is not intended to cover the regal functions of the State and the said definition of the expression "industry" was thus read down by the Supreme Court.

47. The case of the Supreme Court which is, however, closer to our case and which can throw more light is its judgment in the case of *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, . The question in that case was whether the cases of High Court staff and the subordinate Judiciary can be referred to the Administrative Tribunal constituted by the State of Andhra Pradesh as per the provision of Article 371-D of the Constitution. In construing the said Article 371-D of the Constitution, the Supreme Court held that the words "Civil Service of the State" would not include the High Court staff and the subordinate Judiciary although the same words used in Article 311 of the Constitution would include them. The narrow construction was adopted by the Supreme Court because the wider construction would have encroached upon the independence of the Judiciary enshrined under Articles 229 and 235 of the Constitution. It is thus clear from all the judgments referred to above that if the words used in the Statute are general, vague or ambiguous and if it is necessary to give narrow meaning to the wider expressions used in the Statute in order to give effect to the intention of the Legislature or to save the same from being rendered invalid, recourse can be had to the doctrine of reading down such wide provisions.

48. As we have pointed out hereinbefore the intention behind the enactment of Article 334-A is to allot land without auction to the landless for construction of buildings or houses. It is also clear that if categories (vi) and (viii) of Article 334-A are not read down, they would be vulnerable under Article 14 of the

Constitution. There does not appear to be any difficulty to read down the said categories which difficulty was present in the case of the D. T. S. Corporation cited supra which involved a lot of recasting of the impugned Regulation 9(b) for reading it down. It is, therefore, necessary that to save the provision in Clauses (vi) and (viii) in Article 334-A from being rendered invalid, they should be read down so as to restrict them to persons who are landless. The reading down of the said clauses would then be in keeping with the object of the Amending Act and also would save the impugned provisions from being rendered invalid. We, therefore, read down the categories in Clauses (vi) and (viii) to those persons who are landless and not to include such persons who own land, buildings or houses.

49. As regards the Rules framed under the Notification dated 25-11-1985, the challenge is to Rules 2, 3 and 4. The said Rules under the Notification dated 25-11-1985 are framed in the exercise of the powers conferred upon the Governor by the newly inserted Clause 19 in Article 153 of the Code. Rules 2, 3 and 4 are as follows:-

"2. Maximum area to be allotted-In respect of any application made after the commencement of these rules, the maximum area that can be allotted to a person shall be restricted to 400 sq. mts.

3. Eligibility- (1) The applicants to be eligible for allotment of a land should not own any residential accommodation or a building site within a radius of 8 kms. from the Comunidade from which he intends to take land on lease.

(2) An applicant to be eligible for grant of land on lease without auction shall not be a person whose annual income from all sources exceeds Rs. 60,000/-.

4. Affidavit to be sworn by certain bidders An affidavit shall be furnished by those bidders in auction who are not original applicants affirming that they do not own any land/house within a radius of 8 kms from the particular Comunidade",

50. As regards Rule 2 which provides that the maximum area that can be allotted to a person should be restricted to 400 sq. meters, the submission on behalf of the petitioner is that the said Rule is contrary to the Code which has an overriding effect and which must prevail over the Rule framed by the Government which is a subordinate piece of legislation. It may be seen that the aforesaid Rules framed under the Notification dated 25-11-1985 are general rules applicable to the allotment of land with or without auction. Rule 2, therefore, is applicable to the leases which may be granted with or without auction. It may then be seen that Article 326 of the Code provides that no land more than 1000 sq meters will be given on lease for construction of houses. However, in appropriate cases a bigger area can be given to the applicant who so desires, but in that case he has to submit the plan of the house. The provision of Rule 2 referred to above restricts the allotment of the land to a limited area lesser than that provided in Article 326 of the Code. It also leaves no discretion to give bigger area if there is necessity for the same. It is thus clearly

inconsistent with Article 326 of the Code. It cannot, therefore, be said that it has been framed to give effect to the provisions of the Code as required by clause 19 of Article 153 of the Code. It is pertinent to see that clause 19 newly inserted in Article 153 by the Amending Act, 1985 contemplates rules for carrying into effect the provisions of the Code. Since Rule 2 is inconsistent with Article 326 of the Code, it has to be declared as ultra vires of the same and has to be struck down.

51. As regards Rule 3, it may be seen that Rule 3 lays down eligibility for grant of the lease of the land. Rule 3(1) provides that the applicant to be eligible for the allotment of land should not own any residential accommodation or a building or a site within the radius of 8 kms. from the Comunidade from which he intends to take the land on lease. Rule 3(1) is not restricted to the lands which are leased out by auction. It is thus applicable to the lands which are supposed to be given without auction under Article 334-A, inserted by the Amending Act in the Code. It may be seen that the requirement of Article 334-A is that the person claiming lease of land for residential accommodation should be landless. However, Rule 3(1) permits any person who may not be landless to claim the land and the only restriction placed upon him is that he should not own any land within 8 kms. of the Comunidade from which he intends to take the land on lease. It is thus clear that Rule 3(1) is inconsistent with Article 334-A of the Code wherein the restriction about the allottee being landless is absolute.

52. As regards the land given on lease by public auction, there is no such restriction provided under the Code that a person who has a residential accommodation or building within the radius of 8 kms from the Comunidade cannot bid in public auction. On the contrary, the very object of giving leases of land by public auction in Article 334 of the Code is to ensure maximum income to the Comunidade through the leases of the lands belonging to it. If the bidders are to be restricted as is laid down by Rule 3(1) the object of public auction viz. the highest income to the Comunidade by grant of leases of its lands, would be adversely affected. The said Rule 3(1) is thus bad looked at it from any angle i.e. from the point of view of granting leases of land with or without auction. It, therefore, needs to be struck down.

53. As regards Rule 3(2) it has enhanced the limit of Rs. 30,000/- in the third proviso to Article 334-A by making it Rs. 60,000/-. In this regard it has to be seen that the third proviso to Article 334-A has provided that no person whose annual income exceeds Rs. 30,000/- or such amount as may be prescribed by the Government would be eligible for grant of land on lease without auction. It is clear from the said proviso that it is intended to be applicable to the employees governed by categories (v), (vi), (vii) and (viii) of Article 334-A of the Code. The learned counsel for the petitioner has urged before us that in interpreting the latter part of the third proviso conferring power upon the Government to prescribe the amount, it should be interpreted to mean by reading it down that the Government is empowered thereunder to specify the amount which is below Rs. 30,000/-. In other words, according to him, the said proviso intends to

provide a maximum limit of Rs. 30,000/-.

54. In appreciating the said submission made on behalf of the petitioner it has to be seen that the intention in enacting Article 334-A is to provide land to such persons who either belong to the weaker sections of the Community or who are in the middle income group as is clear from fixation of the income limit of Rs. 30,000/- in the third proviso to Article 334 of the Code. When the power is conferred upon the Government to vary the said limit, it has to serve the purpose of the said Article itself. It is a matter of common knowledge that costs of living or prices of essential commodities are rising and the life style of the people is also accordingly changing. The limit of Rs. 30,000/- cannot, therefore, be held to be static. It cannot also be said that that is the maximum limit because in the first place, there is no such restriction in the said third proviso in Article 334-A of the Code and secondly, if the said limit has become unreal in view of the rise in cost of living and prices and other relevant factors, it may be necessary to vary the said limit of Rs. 30,000/- upwards. It is, therefore, not possible for us to read down the power of the State Government under the third proviso of prescribing any other income limit.

55. However, as discussed above, the guiding principle of making available the land to such persons whose income as on the date of enactment does not exceed Rs. 30,000/- has to be borne in mind by the State Government in prescribing any other amount for satisfying the income criteria to get the land. In this regard it has to be borne in mind that when a discretion is conferred upon a high authority the provision conferring discretion as such is not bad or arbitrary or discriminatory even though there may not be any guidelines expressly laid down to regulate the discretion thereunder. See the judgment of the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others, .

56. The question which has, therefore, to be considered in the instant case is whether Rule 3(2) which has increased the limit of income to Rs. 60,000/- for the purpose of the third proviso to Article 334-A of the Code serves the purpose for which Article 334-A was enacted. It is necessary to see in this regard that after considering the pros and cons of the question, the Legislature itself has laid down the limit of Rs. 30,000/- while enacting the Amending Act which came into force on 5-1-1985, the Act itself having been passed on the 1st day of August 1984. The question, therefore, is whether in a short duration of a few months when the Rules were framed on 25-11-1985, the limit of Rs. 30,000/- has become so unreal that it has to be raised to Rs. 60,000/- by framing a rule in that regard.

57. In our view *ex facie*, the exercise of power of increasing the limit of income immediately after the Amending Act came into force on 5-1-1985 is bad in law and beyond the purpose for which the power is conferred upon the State Government under the third proviso to Article 334-A introduced by the Amending Act. It has also not been shown to us as to how the income group which was

notified in the enactment as not exceeding Rs. 30,000/- has become within a short duration the income group of the limit of Rs. 60,000/-. In this view of the matter, Rule 3(2) which has no rationale for enhancement to Rs. 60,000/- is also bad in law and is liable to be struck down. We may observe that as a corollary to striking down of Rule 3(1), Rule 4 which requires the bidders to file affidavits in regard to the requirement of Rule 3(1) must also fall along with Rule 3(1). As such the said Rule 4 also is struck down.

58. We then proceed to consider the question whether the allotment of the land to the respondents 1 to 12 who are Government servants is liable to be set aside. As already pointed out, the applications for allotment of land without auction were originally made by the respondents 1 to 12 on 1-1-1984 pursuant to the administrative instructions issued by the State Government in that regard. However, the said applications remained pending and in the meanwhile on 5-1-1985 the Amending Act introduced Article 334-A enabling the land to be allotted without auction to certain categories enumerated therein which include the category of Government servants as shown above. After those applications remained pending for a long time, the lands were allotted to respondents 1 to 12 on 10-2-1985, i.e. after the Amending Act came into force introducing Article 334-A in the Code. Since the order of allotment was actually issued after the enactment of Article 334-A, the action of the State Government in allotment of land without auction has to be judged in the light of provisions of Article 334-A introduced by the Amending Act. As held by us above, the said Article 334-A justifies allotment of land on lease without auction if the Government servants are landless. The learned counsel for the petitioner has urged before us that the respondents 1 to 12 are not landless, and therefore, the allotment made in their favour is bad. The learned counsel appearing for the respondents Nos. 1 to 12 has, however, asserted before us that respondents 1 to 12 allottees are landless and therefore, in the view which we have taken about the validity of clauses (vi) and (viii) of Article 334-A of the Code if they are landless, the allotment made in their favour should be upheld.

59. Although there is dispute between "the parties, there is no material before us to show whether the respondents 1 to 12 allottees are landless or not. The competent authority will have, therefore, to determine the question whether they are landless or not. If they are, the orders of allotment of land in their favour can be held to be good. But if they are not, the order in their favour will have to be set aside. The other question raised in regard to allotment of land to the respondents 1 to 12 by the learned counsel for the petitioner is that the price fixed for the land allotted to them is low and does not represent the market value which has to be ensured to the Comunidade even as per the guidelines of the Government. It is therefore, necessary that the competent authority should make proper enquiry upon these questions.

60. In the result, the instant writ petition partly succeeds. In the view which we have taken on interpretation of Clauses (vi) and (viii) of Article 334-A introduced

by the Amending Act, no relief can be granted to the petitioner that the said clauses are ultra vires of Article 14 of the Constitution of India and should be struck down. As regards the Rules framed under the Notification dated 25-11-1985, Rules 2, 3 and 4 framed thereunder are struck down as illegal and ultra vires. As regards the allotment of land to the respondents 1 to 12, as per the order dated 10-2-1985, the said orders of allotment are set aside and the authority competent to allot the land is directed to make fresh inquiry in regard to the eligibility of the respondents 1 to 12 for allotment of land in the light of the view which we have taken in this writ petition and thus to consider their claims for allotment of land afresh. Rule is made absolute in the above terms. No costs.