

(1994) 05 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No's. 42 of 1990 and 707 of 1992

Mohinder Pal

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 09-05-1994

Acts Referred:

Constitution of India, 1950 — Article 245, 31, 31A, 31A(1), 31A(2)
Himachal Pradesh Kulehar Forest (Acquisition of Management) Act, 1992 — Section 1, 4, 5

Citation : AIR 1995 HP 15 : (1994) 2 ShimLC 337

Hon'ble Judges : Kamlesh Sharma, J;D.P. Sood, J;Bhawani Singh, J

Bench : Full Bench

Advocate : D.D. Thakur, K.D. Sood and A.K. Goel, for the Appellant; B. Datta M.S. Guleria, Dy. A.G., Haminder Lal and P.A. Sharma, Sr. C.G.S., for the Respondent

Judgement

Bhawani Singh, J.—The petitioner has challenged the constitutional validity of the Himachal Pradesh Kulehar Forest (Acquisition of Management) Act, 1992 (hereafter shortly, "the Management Acquisition Act" or "this Act"), on numerous grounds being recorded in the latter part of this judgment. Before passing of this Act, the State Government issued Notification No. Rev. D(F)7-1/90, dated January 19, 1990, u/s 3 of the Punjab Resumption of Jagirs Act 1957 directing the Principal Chief Conservator of Forests to take over management and possession of Kulehar Jagir Forest from the petitioner with the assistance of the Collector. This Notification was assailed by the petitioner through Civil Writ Petition No. 42 of 1990 (Shri Mohinder Pal v. State of Himachal Pradesh and others). By orders of January 22, 1990 and June 26, 1990, operation of this Notification was stayed and the writ petition admitted for hearing. Since both the actions of the respondents relate to the same forest, we asked Shri B. Datta, learned senior counsel for the respondents, to spell out the stand of the respondents in this regard. The learned counsel submitted that the respondents do not depend on the Notification issued under the Resumption of Jagirs Act,

1957, impugned in Civil Writ Petition No. 42 of 1990, the same would be withdrawn in due course. The State Government solely depends upon the present Act, thus, rendering Civil Writ Petition No. 42 of 1990 infructuous. In view of this stand taken by the respondents, we dismiss Civil Writ Petition No. 42 of 1990 as infructuous and direct the State Government to withdraw the impugned Notification.

2. In order to understand the crucial questions involved in this case for decision, it is necessary to make mention of the essential facts of this case.

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

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

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

strict accordance with facts."

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

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

5. So far as twelve Khalsa "Tappas" are concerned, Lt. Governor observed as under:

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

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

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

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

which the management was assigned to the Rajas of Guler, Dada Siba, Nadaun and Kutlehar respectively.

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

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

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

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

- (1) That there are no trees standing on the land.
- (2) That the land adjoins an existing main block of cultivation.
- (3) That other Khewatdars and bartandars do not object.
- (4) That the land has been inspected by a Forest Officer, who has satisfied himself that the above conditions have been observed. In the Khalsa villages of Taluka Kutlehar whenever the Raja refused an application to break up land, he shall refer the case for the confirmation of the Deputy Commissioner.

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

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

- (a) He may sell to traders only the trees that have been marked for this purpose by the Forest Department.
- (b) He shall keep the sales of bamboos within the limits in regard to number and locality fixed by the Forest Department.
- (c) He shall sell trees only at the rates approved by the Forest Department.

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

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

- (a) In the case of Nadaun and Guler receive one-half and Government one-half.
- (b) In the case of Kutlehar receive three-fourth and Government one-fourth;

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

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

10. The petitioner further submits that it would be apparent that certain provisions of the Forest Act were made applicable to the Kutlehar Forest by about the time when the Lt. Governor had finally pronounced upon the rights of the petitioner's predecessors. Joint interest of the Government and private individual in forests was for the first time recognised by the Legislature while enacting Section 79 of the Indian Forest Act, 1878. It was a time when the Government was attempting to establish its control over forests and other State properties. Presumably, in order to settle subsisting and impending controversies, Section 79 was incorporated in the Indian Forest Act, 1878. Although the decision of Lt. Governor in regard to the entries in the record of rights declare the Government as owner of the forest, the fact remains that there could be no assignment of management in favour of private individuals unless such private individuals had some rights or interests in the forest. Section 79 of the Forest Act, 1878 envisages that:

"79. Management of forests the joint property of Government and other persons-- (1) If the Government and any person be jointly interested in any forest or waste-land, or in whole or any part of the produce thereof, the State Government may either-

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

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

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

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

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

the State Government."

11. These provisions form part of the Indian Forest Act, 1927 as Sections 80 and 81. They provide for the management of forest either by the Government or by a person in case they have joint interest in it. Sharing of the income is also contemplated and it is only in case of failure to perform service by the person that the share is liable to be confiscated that too when it is established to the satisfaction of the local Government. But opportunity to establish to the contrary by the person concerned has been made part of the provisions of Section 80 before confiscation of the share is actually resorted to. The entrustment of the management of the forest contemplated by the Forest Act of 1927 was an acknowledgment of the co-ownership in the corpus of the forest and its produce between the Government and the right-holders. The Settlement operations in the Civil District of Kangra, of which Kulehar was a part, were started in 1868 A.D. The Settlement Officer Mr. James Lyall had taken note of the fact that the petitioner's forefathers were in possession of the forest in question and were managing the same in their capacity as proprietors of the trees. Accordingly, a proposal was made vide letter No. 12, dated February 2, 1868 for the management of the said forest by the petitioner's forefathers and the proposal was accordingly approved vide letter No. 49, dated January 11, 1869 by the Government of Punjab. The terms and conditions, subject to which the management was agreed upon, were as follows:

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

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

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

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

12. The agreement between the parties was rather provisional since the matter had not been set at rest completely. It is clear from the fact that even during 1869-1882 when the petitioner's predecessors-in-interest were in possession and management of the forest, their claim for higher rights continued to be enquired into. The memorandum dated July 27, 1882 of Mr. Anderson, Forest Settlement Officer, addressed to Col. W.G. Davies, ICS, Commissioner and Superintendent, Jalandhar Division to the Senior Secretary to the Financial Commissioner, Punjab, throws a complete light on the rights of the petitioner's forefathers in regard to the aforesaid forest. The following extracts from the letter of Col. W.G. Davies, ICS, Commissioner and Superintendent, Jalandhar to

the Senior Secretary to the Financial Commissioner, Punjab, No. 2462, dated November 27, 1882 would substantiate the submissions:

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

possess great force, especially the last, and it would, in my opinion, be a most ungracious act on the part of Govt. to make any change now in an arrangement made so long ago as 1860, during the minority of the Raja, by the officer in-charge of his estate, and would, in the eyes of the Raja at least, have the appearance of a breach of faith. These existing division of the income from these forests is, moreover, a much simpler one than that originally proposed and the loss to Govt. involved in it is very trifling. This is admitted by the Deputy Conservator of Forests. I, therefore, recommend that no change be made."

13. The petitioner submits that the decision of the Lt. Governor of Punjab conveyed by letter dated May 25, 1960 finally resolved the dispute between the predecessor-in-interest of the petitioner and the Government of Punjab and the conditions contained therein are similar to those which had been laid down in 1868. They are reproduced hereunder:

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

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

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

- (1) That there are no trees standing on the land.
- (2) That the land adjoins an existing main block of cultivation.
- (3) That Khewatdars and Bartandars do not object.
- (4) That the land has been inspected by a Forest Officer, who has satisfied himself that the above conditions have been observed.

In the Khalsa villages of Taluka Kutlehar whenever the Raja refuses an application to break up land, he shall refer the case for the confirmation of the Deputy Commissioner.

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

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

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

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

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

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

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

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

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

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

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

B -- In Dada Siba only.

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

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

C -- In Kutlehar only.

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

(1) to take dry wood;

(2) to take grass and patra;"

(3) to graze their own cattle;

(4) to take leaves of chil for tanning;

(5) to take taur leaves;

(6) to take stones for grinding-mills;

(7) to take limestone.

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

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

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

without the Raja's permission."

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

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

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

17. Thereafter, the Himachal Pradesh Legislative Assembly passed this Act. It was submitted to the President under Clause (2) of Article 254 and Article 31A of the Constitution. Assent was granted and the Act has come to force. Section 2 defines terms like "appointed day", "grant", "grantee" and "Kulehar Forest".

Section 3 deals with the grants made by the Government in favour of the Ex-chief or Ex-ruler and the terms and conditions thereof.

18. Section 4 abolishes such grants and absolves the grantee of the liability to perform any condition or obligation attached to such grant. Section 5 provides for payment of an amount equivalent to 1/5th of the net income after deduction of all lawful expenses incurred by him in the management during the financial year 1988-89. The amount is payable in five instalments. The amount has been made payable on first day of June every year for a period of five years from the appointed day carrying interest at the rate of 9% per annum from the date such amount becoming payable till the date of payment.

19. Section 6 envisages the appointment of a person having adequate knowledge and experience in matters relating to accounts, as Special Officer to assess the net amount payable under this Act by the Government to the grantee, after making deductions mentioned in Section 7. Liberty has been given to the Special Officer for seeking assistance from such Officers and staff of the Government as he may deem fit in assessing the net amount payable etc. etc.

20. Section 7 mentions the sums to be deducted from the gross amount payable under this Act to the grantee, namely, the amount, if any, already paid in advance; the amount, if any, which the Government is entitled to deduct u/s 12; the amount due, if any, including interest thereon, from such person, to the Government before the appointed day; and the amount, if any, relating to debts, mortgages or obligations as mentioned in Sub-section (2) of Section 11. Provided, that before making any deduction under this section, the grantee shall be given a notice to show cause against such deductions within a period of thirty days from the date of receipt of such notice.

21. Section 8 refers to the transfer of services of existing employees to the State Government. Section 9 enables an employee of Government, authorised in this behalf by general or special order of the Government or the Special Officer appointed u/s 7 after giving the grantee or any other person in possession of such forest or waste-land a reasonable notice, enter upon any land or premises in his possession and make any survey, examination or investigation, primarily or incidental to the purposes of this Act.

22. Section 10 calls upon the person in possession, custody or control of property vested in the Government to deliver the same to the Officer authorised by the Government forthwith and also to hand over all books, documents or other papers relating to the management of the forest or grant. Such person would be responsible to account for the same and the Government has been authorised to take all steps necessary to take possession of all properties vested in it under this Act.

23. Section 11 deals with the effect of such vesting while Section 12 authorises the Government to deduct from the amount payable to the grantee under this Act an amount which it considers to be loss sustained by the Government on

account of the transactions which are not bona fide, though, such a step has to be preceded by a show cause notice of thirty days from the date of receipt to the grantee.

24. Section 13 provides for arbitration by a sitting or retired District or High Court Judge appointed by the Government where any dispute arises whether the amount determined by the Special Officer and payable in consideration of extinguishment of rights in the Kutlehar Forest is in conformity with the provisions of Section 6 of the Act; whether property belonging to, or any right, liability or obligation attaching to the grantee vests in the Government and whether any agreement or other contract referred to in Section 12 has been entered into bona fide or not.

25. Section 14 provides for penalties for committing breach of directions given u/s 10 of the Act and other provisions, while Section 17 enables the Government to make rules to carry out the purposes of this Act.

26. The respondents have filed the reply on the affidavit of Deputy Secretary (Forest) to the Government of Himachal Pradesh, It has been stated that the lands in dispute have been recorded as "Shamlat Tikka Hasab Mundraja Shajra Nasab" in the revenue records in the year 1955 and before. It vested in the village Panchayats of the area under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 and thereafter in the State of Himachal Pradesh under the Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974. All the rights, title and interest in it have thus vested in the State Government including the trees and other properties. Thus, the entire property including the trees have ceased to be the property of any other person including the petitioner and, therefore, he cannot continue to manage the forests standing over the lands. In Civil Writ Petition No. 42/90, the petitioner had not claimed any right in the trees. Only right to manage the forest was claimed. Thus, he is estopped from raising different claims now. Even under the Forest Settlement Reports, the trees and the forest produce vest in the State Government since times immemorial and these have been declared as protected forests and the petitioner cannot claim any more rights in these forests than recorded in the Forest Settlement Reports. However, whatever rights he possessed, have been taken over by the present legislation against payment of adequate compensation. The right to property is no longer a Fundamental Right. Step taken by the State is towards agrarian reforms covered under Article 31A of the Constitution and is, therefore, non-justiciable. The provisions of Article 300A have been complied with. There has not been violation of Articles 14, 19 and 300A of the Constitution by passing of Acquisition of Management Act, 1992.

27. After the advent of Sikh Rule around 1825, the principalities of Kangra, of which Kutlehar family was a smaller principality, were seized by Maharaja Ranjit Singh. This family was conferred a Jagir in Hoshiarpur District to the extent of Rs. 10,000/-. Later, with the consent of the British Government, this Jagir was shifted in four Tappas" of Kutlehar in accordance with the arrangement. The Jagir

was assignment" of land revenue and nothing more. It is denied that any right was vested in the petitioner or his predecessors-in-interest by the said grant. So far as the grant of Jagir is concerned, the same came to an end under the provisions of Resumption of Jagir Act, 1957. The petitioner received compensation under this Act and all rights, title and interests which the petitioner possessed in these four Tappas", came to an end. However, he continued to manage the forests, the proprietary rights of which vested in the Government in accordance with the arrangement arrived at with the then State of Punjab. It is, however, admitted that the present dispute relates to 16 "Tappas" of land known as Kutlehar Forest which were declared protected forest and the petitioner and his predecessors-in-interest were assigned the management of this forest as a Manager and certain powers under the Indian Forest Act and other Forest Laws were conferred on him. Out of 16 "Tappas", 4 were Jagir Tappas" and 12 were Khalsa Tappas". The management was to be carried on in accordance with conditions (Annexure RB). There is separate records of rights for each village included in the "Tappa", therefore, they are estate with the meaning of Article 31A of the Constitution of India and also under the provisions of the Punjab Land Revenue Act and the H.P. Land Revenue Act.

28. It has been admitted that there were about 20,000 acres of land recorded as "Shamlat Tikka" in the revenue records on which there were certain trees. The soil of the waste land vested in the village proprietors in proportion to the share they had in the land of their actual cultivation. According to the revenue records and the Forest Settlement Report, the trees over these lands belonged to the Government and the soil to other proprietors. The petitioner had no right, title or interest in the aforesaid trees on the land. These owners of the soil had certain "Bartandari rights" (get timber at concessional rates, grazing of cattle, use of forest produce for domestic use etc. etc.). It has been denied that the forefathers of the petitioner were the proprietors of these trees. The petitioner's forefathers had accepted the arrangement arrived at with the then Punjab Government which were finally as per entries made in the Forest Settlement Report for Jagir forest by Sheep Shank in 1915 and corrected by the Himachal Pradesh Forest Department up to 1974. These rights about Kutlehar forest Jagir, were later amended vide Notification of July 30, 1945. It has been specifically mentioned in Clause (2) of the Forest Department Notification No. 42-90 of August, 1916 that:

"The soil of the protected forests belongs to the persons or communities recorded as proprietors of it in the revenue settlement record, and these persons or communities may exercise over it all the rights of proprietors, subject to the rights of Government and of the "Bartandars", and to the other limitations and exceptions hereinafter specified."

Clause III as amended by Notification dated July 30, 1945, states that:

"III(a) Rights in the demarcated and un-demarcated protected forests included in the Jagirs of Rajas of Guler, Dada Siba, Nadaun and Kutlehar or under the management of any of the said Rajas in the District of Kangra."

"(b) "In the case of forests included in the Jagirs or under the management of the Rajas of Dada Siba and Kutlehar."

"All trees growing in the protected forests, subject to the right of Bartandars and to the other conditions and exceptions hereinafter specified, belong to Government, but have been assigned by Govt. to the Raja so long as he abides by the conditions of management hereunto appended on such other conditions as may hereinafter at any time be substituted for them."

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

30. The petitioner has laid claim to the trees and not to the soil over which they are growing. All rights, title and interest of the soil underneath the trees stood vested in Village Panchayats and then in the State Government as already stated herein before. The petitioner would not be entitled to any tree standing on the surplus land beyond thirty acres including private land under the provisions of the Himachal Pradesh Ceiling of Land Holdings Act, 1972, It has been admitted that the forefathers of the petitioner had raised claim to the trees grown on the land, however, the matter was concluded by notifications issued on the subject from time to time which are final and statutory in character and had been accepted by the petitioner and his predecessors-in-interest continuously. The records plainly demonstrate that the petitioner or his predecessors-in-interest were never declared owners of the trees. These trees were assigned to him for management only. Provisions of the Forest Act like Sections 79 and 80 (Forest Act, 1878) or Sections 80 and 81 (Indian Forest Act, 1927) do not apply to the facts of this case. The management of the forest was not entrusted to the petitioner under these provisions. It was independent of it and the Government was at liberty to manage the affairs of the forest in the best possible manner and the arrangement was on account of privilege conferred on the petitioner and his predecessors to manage the forest of Kutlehar and it is wrong to assert that any proprietary rights were conferred on the petitioner or his predecessors-in-

interest. The petitioner has not given full extracts of the report of the settlement by Sir James Lyall. It is only a reproduction of the Forest Settlement Report by Sheep Shank and is, therefore, secondary in nature.

31. All the arrangements or the interests of the parties in the forest are to be deciphered from the Forest Settlement Report of Mr. Sheep Shank and Mr. A. Anderson relating to Kangra Vally. It is denied that arrangement was provisional in nature. As a matter of fact, all the claims of the petitioner were rejected as is clear from Annexure PA filed by the petitioner. The relevant document is the final order of Lt. Governor of Punjab and references prior to the same are irrelevant. The letter quoted by the petitioner mentions that previous practice was under a mistake and that mistake would confer on the Raja more than he was entitled to receive under orders of the Government. This was only a proposal which was not finally accepted by the Lt. Governor which crystallised all the rights and privileges of the petitioner finally. The petitioner was required to pay 1/4th of the amount realised from the sale of the forest produce by way of royalty and retain 3/4th for himself. The arrangement to manage the forest by the petitioner was de hors the Indian Forest Act, 1878 or the Indian Forest Act, 1927 and 3/4th share receivable by him was in the nature of a quid-pro-quo for the services to be rendered in the management of the forest. It was at best a service grant which could be resumed when services were no longer required by the State. This kind of arrangement was not only with the petitioner. Similar arrangements were made with the Rulers of Nadaun, Dada Siba and Guler and higher share received by the petitioner, does not make any difference between him and the other Rulers.

32. Under the Punjab Resumption of Jagirs Act, 1957, all the Jagirs in Kutlehar, Dada Siba, Nadaun and Guler came to an end and the management had nothing to do with the "Jagirs" so granted. The public was demanding the taking over of these forests, income of which was being utilised by an individual. The forests were not worked on social lines. In these circumstances, it was in public interest that the management has been taken over through validly enacted legislation and by virtue of Section 4, all rights, titles and interest of the grantee in the forest or waste land held by him, stand vested in the Government free from all encumbrances. The Act has been enacted as a measure of agrarian reforms as well which is covered by Article 31A(1)(a) of the Constitution. Kutlehar Forest is an estate within the meaning of Article 31(1){a) of the Constitution as well as Section 4(5)(a)(b)(c) of the H. P. Land Revenue Act. The definition of estate under Article 31(1)(a) is wide enough to cover Kutlehar Forest inasmuch as this falls within the definition of local area, namely, Himachal Pradesh Land Revenue Act of which a separate record of rights has been maintained and would have been assessed to land revenue in case it had not been realised/compounded/redeemed. Even otherwise, it squarely falls within the definition of Article 2(a)(b) of Article 31(1)(a) of the Constitution. Therefore, the provisions of An. 31A are clearly applicable to the present legislation. By virtue of repeal of Clause (f) of Article 19(1), no Fundamental Right to properties is available to the petitioner

and the legislation cannot be impugned on that basis.

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

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

35. No private property of the petitioner is being acquired. The legislation takes over the management of a forest which had been entrusted to the petitioner at some stage. He had no right, title or interest in it and even if he had some, the same has been acquired by the legislation. The legislation cannot be challenged on the ground of motivation or mala fide. There was no pressure from any Member of Legislative Assembly of Kulehar constituency for taking over the management of the forest. In any case, no malice can be attributed to the Legislative Assembly which passed the Act.

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

allegations of the petitioner have also been denied.

37. Through the rejoinder, the petitioner submits that the land over which the forest has developed, was owned by the village community and the trees were planted by the forefathers of the petitioner. Raja Ram Pal laid claim to the trees during 1915-1916 and it was in acknowledgment of his right that the then Government had clearly accepted that Raja had established his title to the trees in question. In these circumstances, vesting of the land in the State of Himachal Pradesh subsequently has no relevance and right of the petitioner to the trees remained intact. The right of management of the forest was the result of substantive right of the petitioner to the trees, so, it cannot be said that the petitioner has no right to the trees in question.

38. The impugned legislation is not valid being opposed to Article 300A of the Constitution. In addition, it has the vice of annihilating the principles contained in Articles 14, 19 of the Constitution. It is not protected by Articles 31 A, 31B and 31C of the Constitution. Simply because right to property has ceased to be a Fundamental Right after 44th Amendment to the Constitution, the position of the respondents does not improve. Deletion of Articles 31 and 19(1)(f) from Part-III of Constitution, right to property has emerged stronger. Rather, it is put of the jaws/clutches of regulatory provisions prohibiting its free application as opined by eminent authors like Seervai, Basu and Tripathi.

39. It is no longer open to the State to contend that this property was a "Jagir" which came to an end as a result of action under the Punjab Resumption of Jagirs Act, 1957. This notification has been challenged and its operation; has been stayed by this Court. After the issuance of this notification, there could be no reason for the enactment of the present legislation. The petitioner submits that his case neither falls under the Resumption of Jagirs Act, 1957 nor does it fall within the purview of Articles 31A and 31C of the Constitution as already asserted. The respondents have admitted that the dispute in the present case relates to sixteen "Tappas" of land known as Kutlehar Forest, management of which was conferred upon the petitioner under the Indian Forest Act. The petitioner, however, denies that these sixteen "Tappas" or any of them constitute an "estate" for the purpose of Article 31A of the Constitution since the lands in question are primarily forest lands and have never been put to agricultural use or any purpose subservient to agriculture.

40. The respondents have put wrong interpretation on the amendment of 1945. Rights of the petitioner, both managerial and proprietary, are most important rights relating to immovable property and the same could not have been acquired except in accordance with constitutionally valid law. The petitioner's rights are substantive in character and he has not been given licence to manage the forest as asserted by the opposite side. The decision of the Punjab Government has to be read along with the correspondence in order to understand the rights of the petitioner correctly. Provisions of Sections 79 and 80 of the Indian Forest Act, 1927 were in existence in the Act of 1878. The right of

management in this case was on account of peculiar relationship between the parties. In case the petitioner or his forefathers did not possess any right in the forests in question, the question of granting right of management under Sections 79 and 80 of the Forest Act would not have arisen at all. While conferring the right of management, principles contemplated under Sections 79 and 80 of the Forest Act were kept in view. It is not a case of conferring bounty out of any love and affection. It was an arrangement intended to solve the competing claims of the petitioner's forefathers and the State in respect of the forest. In case the petitioner and his forefathers has no right in the trees, there could be no compulsion to entrust the forest for management against "realisation of 3/4th share of the gross income.

41. The concept of "Jagir" was wholly different from the management of the forest. The Resumption of Jagirs Act, 1957 was intended to fulfil the objectives underlying Article 31A of the Constitution. Its resumption was necessary for bringing about agrarian reforms. It did not deal with this kind of relationship between the petitioner and the State and, therefore, out of the concept of agrarian reforms. The respondents should admit that this is the best maintained forest in the country. Similar view was expressed by the two expert members of the Committee, appointed by this Court, in its report of March 13, 1993. There was no public cry for taking over the management as asserted. No record has been produced to substantiate this stand. No economic benefit is being extended to the petitioner by this management, as already stated, substantial amounts are being spent for plantation, preservation, maintenance and management of this forest out of the three-fourth share allotted to the petitioner while the State is utilising 1/4th share. It is, therefore, denied that the petitioner or his forefathers have earned crores of rupees from the income of this forest. The trees standing today in the forest have been planted, preserved and managed by the petitioner with his money. Even if it is assumed that there is some kind of co-ownership between the State and the petitioner, the right of the petitioner is higher than that of the State, since the forest is the result of his and his forefathers' efforts. Terminating this relationship and taking away of the forest against paltry amount, consequently, amounts to confiscation of his property. The State may have power of eminent domain, however, before exercising this right, it has to establish that acquisition is for public purpose and is against payment of compensation at the market rate. In addition, it has also to demonstrate that the acquisition is being made on the basis of a valid law. All these factors are missing in the present case.

42. The petitioner further submits that he has been using the personal properties in connection with the management of the forest for the past many years and the legislation has not made any distinction in this regard. Besides, the property which has been raised by the petitioner from out of the income of 3/4th share, cannot be held to be State property nor made part of the acquisition. The right possessed by the petitioner is substantive one. It is neither a licence nor a privilege. The petitioner has co-ownership with the State in view of the genesis

of the right and the circumstances culminating in the arrangement. In the circumstances pointed out by the petitioner, the legislation is completely arbitrary in nature. It is unconstitutional and deserves to be declared as such.

43. After narrating the essential features of the case, we proceed to deal with the contentions raised by the learned counsel for the parties.

44. It was contended by Shri D.D. Thakur, learned, senior counsel for the petitioner that the impugned legislation is ultra vires of the Constitution since it does not seek to acquire any tangible or corporeal property, but cash grant or chose in action which is not acquirable. It was also asserted that it is not a grant conferred upon the petitioner. This arrangement of entrusting the forest was in recognition of the superior right of his client in the forest, so it is a case of joint property and not a case of "Jagir" because in that event it could be taken over under the Jagirs Act, 1957 by virtue of the Notification issued by the State Government challenged in Civil Writ Petition No. 42 of 1990. Reliance on *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, was placed in support of the contention that private property cannot be acquired for purpose of enrichment of the coffers of the State nor can choses in action be acquired. We refer to these paragraphs hereunder:

Mukherji, J. observed as under (pp. 960-961 of SCR): (at pp. 279-280 of AIR):

"Clause (4)(b) of the impugned Act read with the provision of Section 24 of the same, empowers the State Govt. to appropriate all the arrears of rent due to a landlord at a particular time and the only obligation it casts on the Government in this respect is to allow 50% of the amount thus appropriated as solatium for the so-called acquisition.

On the face of it the legislative provision purports to have been made in exercise of the powers conferred on the State Legislature under Entry 36 of List II and Entry 42 of List III of Schedule VII of the Constitution. In my opinion, this is a mere device or pretence and the real object which the legislation intended to accomplish is to deprive a man of his money which is not ordinarily a subject matter of acquisition, in exercise of what are known as powers of eminent domain by the State, without giving him anything in exchange; and under the guise of acting under Entry 42 of List III, the legislature has in truth and substance evaded and nullified its provisions altogether.

The general principles, which distinguish the powers of eminent domain from other powers of the State under which the sacrifice of the proprietary interest of a citizen could be demanded or imposed, are fairly well-known. As has been observed by Cooley in his *Constitutional Limitation* "every species of property "which the public needs may, be required and which the Government cannot lawfully appropriate under any other right, is" subject to be seized and appropriated under the right of eminent domain (1). Money as such and also rights in action are ordinarily excluded from this List by American jurists and for good reasons (2). There could be no possible necessity for taking either of them

under the power of eminent domain. Money in the hands of a citizen can be reached by the exercise of the power of taxation, it may be confiscated as a penalty under judicial order and we can even conceive of cases where the State seizes or confiscates money belonging to or in the hands of a citizen under the exercise of its "police" powers on the ground that such fund may be used for unlawful purposes to the detriment of the interests of the community. But, as Cooley has pointed out, taking money under the right of eminent domain when it must be compensated by money afterwards could be nothing more or less than a forced loan and it is difficult to say that it comes under the head of acquisition or requisitioning of property as described in Entry 36 of List II and is embraced within its ordinary connotation.

It is said by the learned Attorney General that the subject matter of acquisition in the present case is not money but choses in action. It seems to me that there is no difference in principle between them because a chose in action can be available to the acquiring authority only when it is made to produce money; otherwise it is useless altogether.

Assuming however that Entry 36 of List II is wide enough to include acquisition of money or a right of action, I have no hesitation in holding that in providing for compensation in respect of such acquisition the legislature has made a colourable use of Entry 42 of List III and has thereby defeated the purpose of that entry altogether. Entry 42 of List III speaks of:

"principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or any other public purpose is to be determined, and the form and the manner in which such compensation is to be given."

45. Chandrasekhara Aiyar, J. spoke thus (pp. 1014 to 1016) (of SCR) : (at p. 295 of AIR):

"..... It is fairly obvious that resort was had to the arrears either for augmenting the financial resources of the State or for paying compensation to the smaller proprietors out of this particular item of acquisition. Property of individuals cannot be appropriated by the State under the power of eminent domain for the mere purpose of adding to its revenues; taxation is the recognised mode to secure this end. If the latter was the real object, it must be observed that to take one man's property compulsorily for giving it away to another in discharge of Government's obligations is not a legitimate and permissible exercise of the power of acquisition.

Sub-clause (1) of Section 24 no doubt provides that 50 per cent of the arrears of rents shall be added to the amount of compensation. This means one of two things (a) either the other 50% is taken without payment of any compensation which is confiscated virtually or (b) 50% is taken as the consolidated value of the arrears of rent -- a lump sum payment for the acquisition of choses in action or actionable claims. Taken either way, it is difficult to see wherein the public

purpose consists. Whether money could be compulsorily acquired at all by a State is a moot question. Willis says in his Constitutional Law at page 816:-- "While, as stated above, any and all property is in general subject to the exercise of the power of eminent domain, there are certain rather unusual forms of private property which cannot thus be taken. These are corpses, money, choses in action, property used by the Government in its governmental capacity, property to be used for a mere substituted ownership unless such substituted ownership is a more necessary use, and perhaps trust property dedicated to a State, mortgage liens, and suits to quiet title". Under the heading "what property is subject to the right", Cooley observes in Vol. II of his book on Constitutional Limitations, at p. 1117:

"From this statement, however, must be expected money, or that which in ordinary use passes as such, and which the Government may reach by taxation, and also rights in action, which can only be available when made to produce money; neither of which can it be needful to take under this power."

In the foot-note he points out : "taking money under the right of eminent domain, when it must be compensated in money afterwards could be nothing more or less than a forced loan, only to be justified as a last resort in a time of extreme peril, where neither the credit of the Government nor the power of taxation could be made available."

46. Mahajan, J. said that (at pp. 942-944) (of SCR): (at p. 275 of AIR):

"The learned Attorney-General contended that the acquisition of arrears was an acquisition of choses in action and that the compensation paid for it was fifty per cent of the amount of arrears. I regret I am unable to accept this suggestion. It is a well accepted proposition of law that property of individuals cannot be appropriated by the State under the power of compulsory acquisition for the mere purpose of adding to the revenues of the State. "The principle of compulsory acquisition of property", says Cooley (in Vol.11 at p. 113, Constitutional Limitations) "is founded on the superior claims of the whole community over an individual citizen but is applicable only in those cases where private property is wanted for public use, or demanded by the public welfare and that no instance is known in which it has been taken for the mere purpose of raising a revenue by sale or otherwise and the exercise of such a power is utterly destructive of individual right. Taking money under the right of eminent domain, when it must be compensated in money afterwards is nothing more or less than a forced loan. Money or that which in ordinary use passes as such and which the government may reach by taxation, and also rights in action which can only be available when made to produce money, cannot be taken under power."

Willis in his Constitutional Law, at page 816, offers the same opinion. Nicholas on "Eminent Domain" (Vol. I at page 97) has expressed a contrary opinion and reference has been made to the decision in Cincinnati v. Louisville etc., R. Co. An examination of his case, however, does not disclose that any such proposition

was stated therein. It was held in that case that a Bill to restrain the enforcement of a State Statute regulating fire insurance rights was a valid law in the State of Kansas. It was not necessary to decide in this case whether under the compulsory acquisition power the State has the power to acquire choses in action of money. But it cannot be seriously disputed that such an acquisition amounts to a forced loan and that the desired result can be made oppositely obtained in exercise of the police power of the State than of the power of eminent domain or compulsory acquisition of property and that compensation in such a case is the same amount of money that is being taken in the case of chose in action, the amount of money that it would produce. In this situation it cannot be held that fifty per cent, of the outstanding arrears was compensation in any sense of that expression for this acquisition. The true position is that the State took over all the arrears and decided to refund fifty per cent of them and forfeit the rest. The validity of this acquisition has to be decided independently of the acquisition of the estates. It has no connection with land reform or with any public purpose. It stands on the same footing as other debts due to zamindars or their other movable properties, which it was not the object of the Act to acquire. As already stated the only purpose to support this acquisition is to raise revenue to pay compensation to some of the zamindars whose estates are being taken. This purpose does not fall within any definition, however, wide, of the phrase "public purpose" and the law therefore to this extent is unconstitutional."

47. In support of the same principle, the petitioner also placed reliance on *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, , in which the Apex Court said that (para 11, p. 333):

"(11) There is considerable authority in America that the power of eminent domain does not extend to the taking of money, the reason being that compensation which is to be paid in respect of money can only be money, and that, therefore, in substance it is a forced loan. In the *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, this view was adopted by Mahajan, J., at pp. 943-944 (of SCR): (p. 275 of AIR), by Mukherjee, J., at p. 961 (of SCR) : (pp. 295, 296 of AIR). It is argued for the respondents that the position under Article 31(2) is the same as in America, as the provision therein that either the amount of compensation should be fixed or the principles on which and the manner in which the compensation is to be determined should be specified, involves that what is taken is not money. It is argued, on the other hand, for the appellant that the latest trends in American Law show, as was observed by Das J., (as he then was) at pages 984-985 (of SCR): (pp. 286-287 of AIR) in the *State of Bihar v. Kameshwar Singh*, (A) (supra), a departure from the view held in earlier authorities that moneys and choses in action could not be the subject of "eminent domain"; and that, in any case, the principles of American Law should not be applied in the interpretation of the provisions of our Constitution. If the contention of the respondents is to be accepted, the question naturally arises what protection a person has in respect of moneys belonging to him if he can be deprived of them by process of legislation. The answer of Mr.

Seervai is that protection is to be sought in Article 19(i)(f), that the word "property" therein has a wider connotation than what it bears in Article 31(2) and includes money, and that the citizens have the right to hold money subject only to law such as is saved by Article 19(5). In support of this position, he relied on the decision in *Bijay Cotton Mills Ltd. Vs. The State of Ajmer*, in which this Court applied Article 19 (6) in pronouncing on the validity of the Minimum Wages Act (11 of 1948) requiring the employers to pay wages at a rate not less than that to be fixed by the Government".

48. It may now be relevant to reproduce paragraphs 8, 9 and 10 of *State of Madhya Pradesh Vs. Ranojirao Shinde and Another*, wherein K.S. Hegde, J., said that:

"8. From the above decisions it follows that choses in action and money could not be acquired under Article 31(2). If it is held that State by the exercise of its power of eminent domain can acquire choses in action and money belonging to its citizens, by paying a fraction of the money taken as compensation, the fundamental right guaranteed under Article 19(1)(f) would be deprived of all its Contents, and that Article will cease to have any, meaningful purpose. The power conferred under Article 31(2) is not a taxing power. That power cannot be utilised for enriching the coffers of the State. It is true that the abolition of the cash grants would augment the resources of the State but that cannot be considered as a public purpose under Article 31(2). If it is otherwise it would be permissible for the legislatures to enact laws acquiring the public debts due from the State, the annuity deposits returnable by it and provident fund payable by it by providing for the payment of some nominal compensation to the persons whose rights are acquired as the acquisitions in question would augment the resources of the State. But nothing so bad can be said to be within contemplation of Article 31(2). That Article must be construed harmoniously with Article 19(1)(f). If so construed, it is obvious that the public purpose contemplated by that Article does not include enrichment of the coffers of the State. Further the compensation referred to in Article 31(2) is, as held by this Court in various decisions, is the just equivalent of the value of the property taken. If for every rupee acquired, fifty paise or less is made payable as compensation the violation of Article 31(2) would be patent and in those circumstances the exercise of the powers by the legislature would be considered as a fraud on its powers and consequently the legislation will be struck down as a colourable piece of legislation."

"9. It is true that in *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, and 1958 SCR 1122 : *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, this Court was considering the question of taking of money by the State that was in the hands of others, but in this case we are concerned with the abrogation of the liability of the Government. But we fail to see any difference in principle in these two sets of cases. In the former case the Government was compulsorily taking others' property and in the latter it seeks to appropriate to itself the property of others

which is in its hands."

"10. It was next urged that the impugned Act, even if it is held not to be protected by Article 31(2) is still valid under Article 31(1). The said Article says that no person shall be deprived of his property save by authority of law. A law which authorises the State to deprive a person of his property must be a valid law. It must not violate Article 19(1)(f) which means that it must satisfy the requirements of Article 19(5). In Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, this Court laid down that the word "law" used by Article 31(1) indicates its limitations and refers back to Article 19 and any law made under Article 31(1), can be sustained only if the restrictions it imposes are reasonable and in the interest of, the general public. The Act which empowers the State to appropriate some one else property for itself solely with a view to augment the resources of the State, cannot be considered as a reasonable restriction in the interest of the general public. That conclusion of ours receives support from the ratio of the decisions of this Court in The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, and in : Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others, wherein Venkatarama Aiyar, J., speaking for the Court, observed :

"Assuming that the correct position is what the respondents contend it is that the case falls within Article 19(1)(f), the question that has still, to be determined is whether the impugned Act, could be supported under Article 19(5). There was some discussion before us as to the scope of this provision, the point of the debate being whether the words imposing reasonable restriction would cover a legislation, which not merely regulated the exercise of the rights guaranteed by Article 19(1)(f) but totally extinguished them, and whether a law like the present one which deprived the owner of his properties could be held to fall within that provision. It was argued that a law authorising the State to seize and destroy diseased cattle, noxious drugs and the like, could not be brought within Article 19(5) if the word "restriction" was to be narrowly construed, and that accordingly the power to restrict must be held to include, in appropriate cases, the power to prohibit the exercise of the right. That view does find support in the observations of Lord Porter in Commonwealth of Australia v. Bank of New South Wales, (1950) AC 235 but the present legislation cannot be sustained even on the above interpretation of the word "restriction", as Section 3(1) of the Act deals with moneys and money cannot be linked to diseased cattle or noxious drugs so as to attract the exercise of police power under Article 19(5). It appears to us that whether we apply Article 31(2) or Article 19(5), the impugned Act cannot be upheld and it must be struck down."

If Article 19(5) is interpreted to mean that State can take by authority of law anyone's property for the purpose of increasing its assets or revenues, the guarantee given by Article 19(1)(f) would become illusory, a proposition to which this Court cannot subscribe."

49. Lastly, the petitioner contended that the majority decision of the Apex Court

in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, reiterates the same principle which had been decided by it in the aforementioned cases and the view of Bhagwati, J., that choses in action can also be acquired, does not affect the vitality of the consistent view all through taken on the subject by the Court. After examining all these decisions carefully, we notice that in all the earlier decisions, the Apex Court had decided that if the purpose of acquisition is only to improve the State revenue, the acquisition is unconstitutional since it amounts to colourable exercise of powers; extracting of money from the individual can be done in exercise of power of taxation. The Court did not examine whether acquisition would be bad even if the purpose of acquisition is also for agrarian reforms and general public good. This aspect of the matter was considered by Bhagwati, J. for the first time in his separate judgment in this case in the context of fast expansion in the activities of the State in modern times. Assuming that chose in action or a cash grant cannot be acquired as held in these decisions, we are of the opinion that the present legislation does not seek to acquire chose in action or a cash grant as contended by the petitioner.

50. The contention of the petitioner that the legislation seeks to acquire cash grant of 3/4th share being retained by him, is totally misconceived. Primary purpose of the legislation is to acquire the management grant and extinguish whatever right any one has in the forest. Therefore, when the management of the forest is taken over, managerial charges being paid to the petitioner would also come to an end.

51. The records demonstrate that the petitioner and his forefathers had been entrusted the management of the forest subject to certain conditions. We have not come across nor the petitioner was able to show any order whereby his superior claim of proprietorship to the trees was ever recognised. Rather, the records point out that the petitioner was entrusted only the management of the forest while the Government retained ownership rights to the trees. Reference to the decision of Lt. Governor Punjab may be referred to in this connection. Further, para 74 of the "Report on Forest Settlement in the Kangra Valley by Anderson (1887)" records that:

"74. Government is owner of trees on all waste land not included in holdings.

The record of rights for these three States asserts in its 1st paragraph the right of Government to the trees on all waste land not included in holdings. This is the basis of the settlement. The right to one-half of the sale proceeds of timber which Government has conferred on the Rajas was granted as an act of pure grace, and may be withdrawn at any time. The Government has also given the Rajas the management of the forests, but that is also subject to their fulfilling all the conditions imposed on them."

52. If we look at the matter more deeply, we notice that the ancestors of the petitioner lost their principality to Maharaja Ranjit Singh in 1825. A "Jagir" of Rs. 10,000/- was conferred on them by Maharaja Ranjit Singh in District Hoshiarpur

which was, at a later stage, transferred to Kangra District. During this time, the management of the forest, on conditions mentioned in para 74 of Forest Settlement Manual, was given. The land belonged to village community in accordance with their actual possession and the trees to the Government. The petitioner or his forefathers had never been in possession of the land.

53. So far as planting of new trees are concerned, the parties have serious dispute. The petitioner submit that fresh trees were planted by him and his forefathers by utilising part of the gross receipts, but the other side, depending on Forest Working Plan, submits that the petitioner or his forefathers did not plant any tree which fact is clear from the Revenue record. The claim of the petitioner as to the planting of fresh trees appears to be correct. It was out of the gross receipts retained by him that fresh trees were not only planted but were also looked after which, with the passage of time, grew into a forest. Otherwise, the old trees could not have survived all through and the forest would have been non-existent by this time. It is in recognition of this contribution of the petitioner that provision for payment of compensation is thereunder Section 5 of the Act (See also the Statement of Objects and Reasons). However, this does not mean that the petitioner and his forefathers acquired proprietary rights in these trees. They simply managed the forest on terms and conditions settled with them, ownership of the trees continued to remain with the State.

54. According to Austin, "ownership means a right which avails against every one which is subject to the law conferring the right to put thing to user of indefinite nature." Full ownership is defined as "A right in definite in point of user, unrestricted in point of disposition and unlimited in point of duration." It is a right in rem which is available against the whole world. Holland defines ownership as "a plenary control over an object." According to him. an owner has three kinds of powers, namely, possession, enjoyment and ownership. Similar is the view of Mark by and Hibbert. All of them admit that restriction may be imposed on the use of the thing by means of agreement or by the operation of law.

55. According to Paton, the rights of an owner are power of enjoyment, the rights of possession, the power to alienate inter vivos or to charge as security, and the power to leave the rest by will. To Hohfeld, ownership is a collection of rights, privileges and powers some of which are frequently found to reside, either for a limited period or perpetually, in persons other than the owner. Buckland and Pollock have also almost the same view of ownership.

According to Salmond :

"Ownership; in its most comprehensive signification, denotes the relation between a person and right that is vested in him. That which a man owns is in all cases a right, when, as is often the case, we speak of the ownership of a material object, this is merely a convenient figure of speech. To own a piece of land means in truth to own a particular kind of right in the land, namely, the fee simple of it." Again, "ownership, in this generic sense, extends to all classes of

rights, whether proprietary or personal in rem or in personam, in re propria or in re aliena. I may own a debt, or a mortgage or a share in a company or money in the public funds, or a copyright or a lease or a right of way, or a power of appointment, or the fee simple of land. Every right is owned, and nothing can be owned except a right. Every man is the owner of the rights which are his."

According to Salmond, ownership, is a relation between a person and any right that is vested in him. That which a man owns is a right and not a thing. To own a piece of land means to own a particular kind of right in the land.

56. Property may be tangible or intangible, corporeal or incorporeal. Property rights of an individual cannot be confined to narrow limits. They vary from property to property and time to time. However, they may be conditioned by the actions of individual or the legislative acts of the State. In the words of Lord Evershed, "property like other interests has a social obligation to perform" (the Judicial process in Twentieth Century England 1961.61 L.R. 7876. There is no clearcut concept about it. It is not a term of art but takes its meaning from its context and from the documents or enactments. It may have money value or any element capable of estimating its value in money for functional use. Therefore, forest is a property. Similarly, the management interest being availed by the petitioner, is also property.

57. It was then contended that the Act is not designed to achieve any public purpose. It is by way of revenge against old feudal system of Rajas as is apparent from the preamble to the Act and the Statement of Objects and Reasons appended with the Bill. It states that in case the management is allowed to continue, it would result in "heavy loss to the Government" and "huge unearned profit to the individual". As a matter of fact, this is not so. We cannot read a legislation by taking bits from here and bits from there. It has to be read as a whole in order to discover the true spirit behind it. The Act provides for the acquisition of management, supervision and control of the Kutlehar Forest and ancillary matters. Preamble to it says :

"Preamble : - WHEREAS, the Ex-Chief or the ruler of the erstwhile princely estate of Kutlehar has been allowed to manage the Kultlehar Forest and to appropriate portion of the income derived therefrom as managerial charges;

AND WHEREAS, such management, if allowed to continue, wilt result in heavy loss to the Government and huge unearned profits to the individuals;

AND WHEREAS, for the purpose of securing principles laid down in Clauses (b) and (c) of Article 39 of the Constitution of India, it is necessary in the public interest that such undue profits to a few persons are utilised for the common benefit of the general public."

58. The Statement of Objects and Reasons may now be quoted in extenso :

"In view of the present democratic set up, the question as to why the old feudal system of Rajas still exists in public administration is agitating the minds of the

public representatives. The management of the forests in taluka Kutlehar continues to be with the Ex-ruler i.e., the ruler of the erstwhile princely estate of Kutlehar and as per conditions of management he is retaining major portion i.e., 3/4 share of gross income and only 1/4th share of gross income in being deposited in the State Treasury. The management was left with the Raja by the British Government partly on account of his influence with the local populace and partly to gratify his wishes. Even after the expiry of four decades of independence and passing of the revolutionary agrarian reforms by the Legislatures, the grant, in relation to the supervision, management and control of forest and waste lands, in favour of the Ex-ruler of erstwhile princely State of Kutlehar still exists in the State of Himachal Pradesh.

The State can benefit much if such management is taken over and it is anachronism when all feudal system trappings i.e., privy purses of Rajas and their hereditary offices have been abolished. In these circumstances if the forests are kept to be under the management of Rajas or individuals, then it would be casting a reflection on the Government that it is not competent to manage when all the forests in Himachal Pradesh are being managed by the Government.

Revenue earning is no longer the primary objective of the forest management. In the present day context the forest management envisages the provisions for maximum social benefits and preservation of ecology of the Pradesh through soil and water conservation measures, which are expensive and non-earning. Inputs on such measures, by a private management cannot be expected. It has thus become necessary to cancel the said grant and extinguish the right conferred upon the grantee and abolish his liability to fulfil his obligations attached to such forest or waste lands. It is also necessary to provide for payment of compensation to the grantee for extinction of his vested rights.

This Bill seeks to achieve the above objectives.

Roop Singh Thakur Minister-in-Charge"

59. Where the enacting part of an Act is explicit and unambiguous, the preamble cannot be resorted to, to control, qualify or restrict it; but where the enacting of the Act is ambiguous, the preamble can be referred to explain and elucidate it. In *Powell v. Kempton Park Race Course Co.* 1899 AC 143 Lord "Halsbury, L. C. said ;

"Two propositions are quite clear..... one that a preamble may afford useful light as to what the statute intends to reach; and another, that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment."

60. However, we prefer to look at the Act as a whole. As said, it seeks to acquire the management, supervision and control of the Kutlehar Forest, defined u/s 2(d) of the Act, from the petitioner. "Grant" has been defined u/s 2(b). It means, the management of Kutlehar Forest was permitted by the Government. The State

wants to dispense with the management of the forest by an individual in this era of democratic set up for better management, social benefits, preservation of ecology, ushering in social and conservation measures and for common benefit of the general public. It also seeks to avoid concentration of wealth in the hands of an individual and utilise the same for common good. There is no much emphasis on revenue earning. It is the only forest in the State which happens to be managed through an individual who incidently is an Ex-ruler, but we do not see any substance in the contention that it has been enacted by way of revenue against feudal system, more particularly, when it has been passed by the elected representatives of the Legislature.

61. Now, we revert back to the history of the case and proceed further to state that the land vested in the Panchayats under the Punjab Village Common Lands Act and thereafter in the State of Himachal Pradesh under the H. P. Village Common Land (Vesting and Utilisation) Act, 1974. It is also worthwhile to record that the petitioner has not laid any claim to the trees for long years and remained contended with the management of the forest. Rather, the petitioner has been accepting that the trees belong to the Government. In these circumstances, his claim of joint ownership of the trees with the State is without any basis. The Entrustment of the management was an arrangement de-hors Indian Forest Act in recognition of his interest in the trees which was not recognised (as) proprietary in nature. Management interest of the petitioner can be recognised from another fact. Despite the resumption of grant u/s 3 of the Punjab Resumption of Jagirs Act, 1957 against payment of compensation, the petitioner continued to manage the forest in four "Tappas". He also managed the forest in other 12 "Tappas" though on the same terms and conditions. This position exists even today and the parties do not dispute this fact.

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

63. The petitioner further contended that the impugned legislation is ultra vires of the Constitution for there is no public purpose behind the acquisition of his rights. Further the legislation does not fall within the ambit of Entry 42, List III of 7th Schedule, therefore, it is without legislative competence. This plea is opposed by Shri B. Datta, learned senior counsel for the opposite side, submitting that the legislation would distinctively point out public purpose behind it, in case it is seen as a whole. So far as the legislative competence is concerned, it was submitted that the legislation falls under Entry 18, List-II "lands" and Entry 17A "forest" and, or Entry 42, List-III "Acquisition and requisition of property" 7th Schedule to the Constitution of India.

64. Principle of "eminent domain" Seems to have originated in 1925 by Hugo

Grotious who wrote of this power in his work "De Jure Belli Et Pacis". This power is essential attribute of sovereignty. It connotes legal authority of the State to take private property of individuals for public purposes. It is necessary to declare this power in express terms since it is an inseparable incidence of sovereignty. However, there are certain safeguards subject to which it may be exercised. In his book on constitutional limitation's, Cooley describes them" (i) there must be a law authorising the taking of property; (ii) the property must be taken for some public use; and (iii) just compensation should be paid."

65. Public nature of functions have grown enormously. In order to discharge these functions in various fields, for example, Government offices, libraries, slum clearance projects, public schools, Colleges and Universities, public highways, public parks, railways, telephone and telegraph lines, dams, drainage, sewers and. water systems, resettlement colonies, residential quarters etc. etc., private property has to be acquired from time to time since private interest has to surrender before a common general public interest.

66. We would like to discuss here that (what?) "public purpose" means since the petitioner also contends that the impugned legislation is ultra vires of the Constitution for there is no public purpose behind the acquisition of the rights of the petitioner. So far as "public purpose" is concerned, no exact definition is possible nor the same is given in the Constitution. However, it can be ascertained from the facts of each case keeping in forefront certain general conditions and guidelines like general interest of the community. In Hama Bai Framjee Petit v. Secretary of State, 42 Ind App 44 : (AIR 1914 PC 20), it was held that in case the termination of lease and resumption of possession was with the object of using the land for providing residential, accommodation to Government servants at reasonable rate, public purpose was validly established. Public purpose means in which the general interest of the individuals is directly and vitally concerned. In Smt. Somavanti and Others Vs. The State of Punjab and Others, it has been said that (para 24):

"Broadly speaking, the expression "public purpose" would, however, include a purpose in which the general interest of the community as opposed to the particular interest of the individuals, is directly and vitally concerned."

In Kameshwar Singh's case (AIR 1952 SC 252, Mahajan, J. (as he then was), observed that:

"Public purpose" has to be construed according to the spirit of the times in which the particular legislation is enacted, It is bound to vary with the times and the prevailing conditions in a given locality."

The present view appears to be more liberal since it takes into consideration the fast changing and manifold functions of the State. It was, in these circumstances, that Das, J. observed in Kameshwar Singh's case that no hard and fast definition can be laid down as to what a "public purpose" is, as the concept has been repeatedly changing in all the countries. The concept does not

mean extension of benefit to a definite class of persons nor is confined to only specific kinds of schemes of general welfare. However, the fact remains that the property of an individual cannot be appropriated by the State under the power of compulsory acquisition for the mere purpose of adding to the revenues of the State.

67. Speaking for the majority, Sikri, J. (as he then was), said in *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, that (para 20):

"Public purpose varies with the time and the prevailing conditions in localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. If it is true that these residential and industrial sites will be ultimately allotted to members of the public and they get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notification was not to think of private comfort or advantage of the members of the public but the general public good..... In our view the welfare of large proportion of persons living in Bombay is a matter of public concern and the notification serve to enhance the welfare of this section of the community is public purpose."

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

69. Accordingly, we see no force in these submissions of the petitioner and proceed to reject them.

70. Now, we take up for consideration the submission that the impugned legislation is not protected by Article 31A, so the petitioner cannot be precluded from/challenging the validity of it for violating Articles 14 and 19 of the Constitution and that Article 31C is also not attracted in this case since none of the objects in Clause (b) nor Clause (c) of Article 39 are being achieved.

71. It was contended by the petitioner that the forest intended to be acquired is not an estate within the meaning of Article 31 A(1)(a) and Article 31 A(2)(a), therefore, Article 31A has no application. In order to bring it within the definition of an estate, the definition of estate has to be seen from the existing law relating to land tenure in force in the area. The Tenancy Laws do not define "estate" and the definition of "estate" in the Land Revenue Act is not relevant. Further, it does not fall under (i) and (ii) and in case it is to be brought under (iii), it is necessary that the forest should be held or let for the purposes of agriculture or for purposes ancillary thereto as held by the apex Court in State of Uttar Pradesh Vs. Raja Anand Brahma Shah, and Balmadies Plantations Ltd. and Others Vs. State of Tamil Nadu,

72. Supporting the validity of the legislation, Shri B. Datta, learned senior counsel for the respondents, submitted that Articles 31A and 31C of the Constitution give complete immunity to the Act, Right to property is no longer a Fundamental Right and after deletion of Article 19(1)(f) and Article 31 from Part-III of the Constitution, the petitioner cannot challenge the validity of the Act on the ground that it violates Articles 14, 19 and 31 of the Constitution.

73. Article 300A is not a Fundamental Right, it is only a legal right requiring the acquisition of property by legislation in place of executive fiat, therefore, the contention raised in this regard is completely unsustainable. The forest under acquisition is an estate under Article 31A(1)(a) as defined under Article 31(2)(a). Assistance from the Land Revenue Code is relevant since it defines it and not from the Tenancy Act. Alternatively, it falls under (i). It is a "Jagir" or in any case, a management grant and can be acquired. The case does not fall under (iii). The submission touching Article 31C is that the legislation is intended to give effect to the policy of the State towards securing the principles laid down in Articles 38 and 39 of the Constitution since it intends to take the management of the forest from the petitioner for the purpose of managing it on social lines and in the interest of the public and environment.

74. Article 31A reads as under:

"31A. Saving of laws providing for acquisition of estate, etc. -

(1) Notwithstanding anything contained in Article 13, no law providing for -

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents,

secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence.

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19.

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article,--

(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include -

(i) any jagir, inam or muafi or other similar grant and in the States of Andhra Pradesh, Madhya Pradesh, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators or landless agricultural labourers and village artisans.

(b) the expression "right", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, term re-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

75. "Estate" has not been defined, in the H. P. Ceiling on Land Holdings Act, 1972. However, it has defined "land" u/s 3(f) as under:

"3(f) "Land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture and includes -

- (i) the sites of buildings and other structures on such land;
- (ii) orchards;
- (iii) ghasnies;
- (iv) banjar land; and
- (v) private forests."

76. Under the Himachal Pradesh Tenancy and Land Reforms Act, 1972, Section 2(7) defines it as under:

"Land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pastures and includes :

- (a) the sites of buildings and other structures on such land;
- (b) orchards;
- (c) ghasnies;
- (d) banjar land; and
- (e) private forest;" Section 2(19) of this Act states:

"'agricultural year", "estate", "holding". "Legal practitioner", "pay", "rates and cesses", "village cess" and "village officer" have the meanings respectively assigned to these terms in the Himachal Pradesh Land Revenue Act 1954 or the Punjab Land Revenue Act, 1887, as the case may be (6 of 1954 and 17 of 1887)."

77. The Himachal Pradesh Land Revenue Act, 1953 does not contain any definition of land, however, it defines "estate" u/s 4(5) in the following terms :--

"Estate" means any area :

- (a) for which a separate record-of-rights has been made; or
- (b) which has been separately assessed to land revenue, or would have been so assessed if land revenue had not been realised, compounded for or redeemed; or
- (c) which the State Government may by general rule or special order, declare to be an estate;"

78. Article 31A(2) gives a wide definition of "estate". This definition is inclusive in nature. It not only defines "estate" being one which has been defined in the existing law relating to land tenure in force in the area but also others falling under items (i) to (iii). In our opinion, in order to give meaningful and functional interpretation to it in the context of the local area, the Tenancy Laws as well as the Revenue Law will have to be read together and if so read, we can definitely conclude that the land and the forest is an estate within the meaning Of H. P. Land Revenue Act. 1953, the H. P. Tenancy and Land Reforms Act, 1972 and the

H. P. Ceiling on Land Holdings Act, 1972. There is also a separate record-of-rights for it. It would have been assessed to land revenue had it not been assigned for management on special terms and conditions between the parties. We find that four "Tappas" formed "Jagir" which was resumed by Punjab Government under the Resumption of Jagirs Act, 1957 against payment of compensation, though the petitioner continued to manage the forest thereafter also with other twelve "Tappas" which conjointly formed the total management grant in favour of the petitioner in acknowledgement of his interest therein by the Government. In any case, it was not a cash grant as sought to be made out by the petitioner. The matter does not fall under (iii) since this provision requires that it must be held or let for purposes of agriculture or for purposes ancillary thereto in view of the apex Court decisions referred to above.

79. In *The Madras Central Urban Bank Ltd. and The Madras City Co-operative Bank Ltd. Vs. The Corporation of Madras*, it has been held that when a definition "includes" certain things, it should be taken that the Legislature either intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question. In *Mellows v. Low* (1923) 1 KB 522, 525, Mc Cardie, J. observed :

"In my view the word "includes" used in para (g) is not a term of limitation or precise definition; it means what it says..... that it includes the matters thereafter mentioned; in other words, it is a word of enlargement rather than of restriction."

80. In *Maxwell on The Interpretation* (p. 270 Twelfth Edition), it is quoted that:

"Sometimes, however, the word "includes" is used in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include."

In other words, the word in respect of which "includes" is used bears both its extended statutory meaning and its ordinary, popular and natural sense whenever that would be properly applicable."

Moreover, we noticed that the land underneath the forest had once vested in the Panchayats and ultimately in the State Government under the Punjab Village Common Land Act and the H. P. Village Common Land (Vesting and Utilization) Act.

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

82. Going over to the next question, we entertain no doubt about the fulfilment

of objectives contained in Articles 38, 39(b) and (c) of Directive Principles of State Policy contained in Part-IV of the Constitution, through the impugned legislation. We have held that the management interest of the petitioner in the forest is a property which the legislation intends to acquire and not choses in action or cash grant being received by the petitioner for the management of this forest. Simply because the petitioner is likely to lose 3/4th gross income from the forest on account of this legislation, it does not mean that his money or cash is being acquired. The legislation seeks to acquire the management of forest extinguishing whatever right/interest the petitioner has in it. Therefore, the loss of 3/4th income of the petitioner, cannot be taken to be the object of the legislation.

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

84. In *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, the Karnataka Contract Carriages Acquisition Act, 1976 for nationalisation of contract carriages in the State was challenged on the ground that there was no real and substantial nexus between the purpose of the acquisition and securing the principles specified in Article 39. The Court said that (at p. 250):

"And material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public possessions. Every thing of value or use in the material world is material resources and the individual being a member of the community his resources are part of those of the community..... nationalisation of transport as a distributive process for the good of the community."

85. In *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, it was held that material resources as enshrined in Article 39(b) are wide enough to cover not only natural or physical resources but also movable or immovable properties, such as the vehicles, tools, implements and the workshop etc. It was also held that nationalisation of the transport would undoubtedly be a distribution for the common good of the people and would be clearly covered by Clause (b) of Article 39.

86. In *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, constitutional validity of Coking Coal Mines (Nationalisation) Act, 1972

and the Coal Mines (Taking over of Management) Act. 1973 was under challenge. The Court held that when Article 39(b) refers to material resources of the community, it does not refer to resources owned by the community as a whole but it refers also to resources owned by individual members of the community. The Court also held that the expression "material resources of the community is not confined to natural resources; it is not confined to resources owned by the public; it means and includes all resources, natural and man-made, public and private-owned.

87. In Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, the Tinsukhia Electric Supply Undertaking (Acquisition) Act, 1973 was challenged as unconstitutional. Protection of Article 31C was taken and upheld. It was held that electric energy generated by the supplier companies constitute material resources of the community within the scope of Article 39(b) and having regard to the true nature and purpose of the legislation, the objects of the legislation had direct and reasonable nexus with the objective of distributing the material resources to subservient the common good.

88. The principles laid down in these decisions have been approved by the apex Court in Assam Sillimanite Ltd. and another Vs. Union of India and others, Therefore, it can be safely held that the forest in the present case constitutes material resource of the community and it must be utilised to subserve the common good. The income generated out of it, must be utilised in such a way that it does not result in the concentration of wealth nor should the means of production prove detrimental to people.

89. "Heavy loss to the Government" and "huge un-earned profits to the individuals", as a matter of fact suggest loss to the community and concentration of wealth in the hands of some individual. These are the evils of the arrangement which the legislation seeks to eradicate and fulfil the objectives contained in Article 39(b) and (c) to the Constitution. Section 2 defines "grant" of Kutlehar Forest permitted by successive Government to the "grantee" namely, the petitioner and his predecessor-in-interest of "Kutlehar Forest", forest and the waste land which, on the appointed day are under the management and control of the Superintendent of Kutlehar Forest and more specifically described in the schedule to this Act. The petitioner is the Ex-ruler of Princely Estate of Kutlehar. He has been appointed as Superintendent of this forest by the Government to exercise certain powers under the Forest Act.

90. Section 3 comprehensively deals with the grant of whatever nature -- management, supervision, control over the forest or waste land, made or granted by or on behalf of the Government in favour of Ex-chief or Ex-ruler of Princely Estate of Kutlehar containing terms and conditions, namely;

(a) the grantee may manage the Forests and appropriate part of the income derived therefrom as managerial charges;

(b) the grantee may appropriate for his own use trees standing; or other forest

produce derived therefrom subject to the payment of royalty at the rates specified in the deed or revenue or forest settlement records evidencing such grant in respect of the timber or forest produce, as the case may be, taken out of the land;

(c) tree value at a nominal rate has to be paid when the land is cleared; and

(d) the grantee is not liable to pay any assessment or rent or he is liable to pay only nominal assessment or rent for the grant."

91. Section 4 deals with the vesting of the rights of grantee in the Government and the extinguishment of the rights in the grant. It provides:

"4. Notwithstanding anything contained in any law for the time being in force, or in any contract or in any judgment, decree or Order of any court, with effect from the appointed day,--

(i) the grant shall stand extinguished and any service or obligation attached to such land shall stand abolished; and the grantee shall have no liability to perform any condition or obligation to render any service/ attached to such grant;

(ii) All rights, title and interest of the grantee in the forests or waste lands held by him, shall vest in the Government free from all encumbrances."

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

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

94. Article 300A was enacted by the 44th Amendment to the Constitution with effect from June 20, 1979 when Fundamental Right to property in Article 19(1)(f) and 31 was deleted. This Article is an exact reproduction of repealed Article 31(1). Right to property has fallen from the status of Fundamental Right to that of a legal right by taking it from Chapter-I, Part III to Chapter-V, Part XII of the

Constitution. It states that no person shall be deprived of his property save by authority of law. It recognises the principle of eminent domain, meaning thereby, three conditions must exist before "the State can deprive a person of this property. They are : (a) there must be a valid law; (b) public purpose; and (c) adequate compensation. Obviously, the "authority of law" means rule of law. The law providing for deprivation of the property should be just, fair and reasonable. It cannot be said that after this change, the legislatures are free to make any kind of law which may be arbitrary in nature and may not provide for compensation to the person who is deprived of his property. Professor P.K. Tripathi has in the article published in AIR 1980 Journal 49 "Right of Property after Forty-fourth Amendment" -- better protected than ever before -- opines that the impression that the State is now free to impose any kind of restriction on the property and acquire property compulsorily for any purposes it chooses without paying anything to ex-proprietor owner in return of the property taken from him, is far from constitutional position. In reality, this right of the citizens' and non-citizens has been secured more comprehensively than even before. Now, any amendment in the existing position will require not only the procedure laid down in main part of Article 368 to be followed but also the consent of the States under the proviso to the Article. The State will not be able to acquire property without showing public purpose and without paying full compensation or market value of the property. While making laws on "acquisition and requisitioning of property" the requirement of public purpose and payment of compensation for the acquisition and requisitioning on the property from expropriated owner will have to be satisfied. These requirements were expressly laid down in Article 31 and now they have to be read by implications.

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

96. The contention raised before us was raised before the High Court of Bombay in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and*

Another, also. In para 18 of the judgment, it has been observed that:

"18. That takes us to an interesting argument presented to us about the introduction of Article 300A in Chapter IV of Part XII of the Constitution. Shri Singhavi submitted that even assuming that the submission urged on behalf of the respondents that the Act is protected by Article 31C of the Constitution and the fundamental rights under Articles 14, 19 and 31 are not available is correct, still the provisions of Sub-sections (3) and (4) of Section 44 of the Act cannot stand the scrutiny of Article 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save by authority of law and it was urged that the expression "authority of law" means rule of law or in other words the law providing for deprivation of the property shall be just, fair and reasonable. Shri Paranjpe on the other hand submitted, and ably supported by Shri Gumaste, that after deletion of Article 31 from the Constitution with effect from June 20, 1979 by Section 6 of Constitution (44th Amendment) Act, 1978, the citizen has no right to claim compensation for deprivation of the property. It was urged that the right conferred on the holder of the property under Article 300A is only a legal right and not a fundamental right, as earlier available under Article 31 of the Constitution. The submission is that under Article 300A of the Constitution, the Parliament, merely intended that there shall not be deprivation of the property except by legislation or in other words the Parliament did not desire deprivation by executive action, but limited such deprivation only by legislation. Shri Paranjpe went a step further and submitted that once the right to hold property is removed from Part III of the Constitution, then no protection whatsoever is available to the holder of the property and there is no obligation on the Legislature to pass legislation which is just, fair and reasonable, or to provide for payment of any compensation or amount for the deprivation of the property. Shri Singhavi, in answer to this submission, urged that in spite of deletion of Article 31 from the Chapter on Fundamental Rights the phraseology used in Article 300 A is identical with that of Article 31(1) and that is indicative of the fact that the Parliament recognised the doctrine of eminent domain and the obligation to pass legislation, which is just, fair and reasonable, is not taken away....."

In para 19 the Court observed as follows :

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

purpose. The entire democratic structure of the country is based upon the concept of "rule of law" and it is not possible to imagine that the legislation can provide for compulsory acquisition of a private property for a purpose which is not a public purpose."

97. The matter was taken to the apex Court where it was reversed on the ground that the acquisition was otherwise sustain-able. In paragraph 15 of *State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others*, the apex Court observed that:

"15. We next proceed to consider a contention lacking in merit which has unfortunately been accepted by the High Court namely that the Act infringes Article 300A of the Constitution. Article 300A was not in force when the Act was enacted. Article 31(1) of the Constitution Which has couched in the same language was however in force. Article 31C gave protection to the Act even if it infringed Article 31. Let us assume that the action of acquiring provate properties should satisfy now Article 300A also because the proceedings to acquire the land started in the instant case after Article 300A came into force. Let us also assume that a law should be fair and reasonable and not arbitrary and that a law should also satisfy the principle of fairness in order to be effective and let us also assume that the said principle of fairness lies outside Article 14. We are assuming all these without deciding these questions, since the action can be upheld even if all these assumptions are well founded. What is it that is being done now in the instant case? Certain vacant lands lying inside a municipal area are being acquired for providing housing accommodation after paying an amount which is computed in accordance with a method considered to be a fair one by Courts. The purpose for which the lands are acquired is a public purpose. The owners are given opportunity to make their representations before the notification is issued. All the requirements of a valid exercise of the power of eminent domain even in the sense in which it is understood in the United States of America where property rights are given greater protection than what is required to be done in our country are fulfilled by the Act, Yet the High Court, with respect, grievously erred in holding that even assuming that the provisions of Chapter V of the Act are protected from challenge under Articles 14, 19 and 31 of the Constitution due to the applicability of Article 31C of the Constitution still the impugned provisions of the Act are required to be struck down as the said provisions are neither just nor fair or reasonable."

98. Now, we look at the impugned Act. Section 5 provides that the Government shall pay to the petitioner an amount equivalent to 1/5th of the net income after deduction of all lawful expenses incurred by him in the management during the financial year 1988-89 and the said amount shall be paid in five instalments payable on the first day of June every year with interest at the rate of 9 per annum. It was strongly contended by Shri D.D. Thakur that the compensation intended to be paid is thoroughly unreasonable, and illusory. Lean year of 1988-89 has been selected intentionally without any reasonably acceptable

criteria. The total annual gross receipts of the forest were ranging between rupees forty to sixty lacs. 3/4th share of that amount would be between thirty to forty lacs. After deducting the amount of expenses on the maintenance of the forest, net saving would come to rupees twenty to twenty-five lacs. In case compensation is determined according to the method of capitalisation the multiplier cannot be less than twenty as is generally done in acquisitions under the Land Acquisition Act. Reference to the following paragraph of *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, was made (p. 609):

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

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

99. We see great substance in this contention for the reasons stated by the learned counsel. In addition to them, we feel that a proper and reasonable mode of assessing the compensation should have been provided for assessing the compensation intended to be payable to the petitioner (see Statement of Objects and Reasons). The petitioner may not have proprietary interest in the forest but he had substantial interest in it that is why the management of the forest has been assigned to him since the time of his ancestor. It has been maintained

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

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

101. No other point was argued by the learned counsel for the parties. Accordingly, we uphold the validity of the Act except Section 5 which is declared as void. Parties are, however, left to bear their own costs.